

Ecclesiastical Cases
Relating to the
DUTIES and RIGHTS
OF THE
Parochial Clergy,
STATED and RESOLVED
According to the
PRINCIPLES
OF
Conscience and Law:

By the Right Reverend Father in GOD,
EDWARD, Lord Bishop of *Worcester*.

Stillingfleet

L O N D O N,

Printed by J. H. for Henry Mortlock at the
Phœnix in St. Paul's Church-Yard, 1698.

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To the Reverend

CLERGY
OF THE
DIOCESE
OF
WORCESTER.

My Brethren,

THE following Discourses do
of Right belong to You;
the Substance of them be-
ing contained in what I delivered
to You in several Times and Pla-
ces, in the Course of my Visitati-
ons: In which I endeavoured to lay
open the Nature and Dignity of

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your Function, the Rules you are to observe in the Discharge of it, and to state and resolve the most Important Cases which Relate to your Duties and Rights, according to the Principles both of Law and Conscience. For I observed that some had spoken very well of the General Nature of the Ecclesiastical Function, without a particular Regard to the Limitations of the Exercise of it by our Laws. Others had endeavoured to give Advice and Counsel in Point of Law, who meddle not with the Obligation of Conscience. And therefore I thought it necessary to joyn both these together, that you might have a clear and distinct View of your Duties in both Respects. For in a Matter of Positive Institution, where only the General Duties are prescribed in Scripture, and the Bounds of the Exercise of them depend upon the Laws of the Land, I
could

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could not see how any Person could satisfy himself in the Discharge of his Duty, without a Regard to both. For the Care of Souls in General, is a Matter of wonderful Weight and Importance, and can never be sufficiently considered by those who are concerned in it. But no Man among us takes upon him an Indefinite Care of Souls, without Regard to Persons or Places ; for that would produce Confusion and endless Scruples, and Perplexities of Conscience about the Nature and Obligation to Particular Duties,

Which cannot be prevented or removed without a right understanding the different Respect all that have taken our Holy Function upon them, do stand in both to the Church in General, and to that Particular Cure of Souls which they are admitted to. The best way I know to represent them, is to consider

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the Case of Dominion and Property; and how far the Universal Obligation of Mankind to promote each others Good, is consistent with the Care of their own and Families Welfare. Adam had in himself the Entire and Original Dominion over all those Things, which after became the Subject of particular Property; when his Posterity found it necessary to make and allow several Shares and Allotments to distinct Families, so as they were not to incroach, or break in upon one another. But the Law of Nature did not prescribe the Way and Method of Partition, but left that to Occupancy or Compact: And so the Heads of Families upon their Settlement in any Countrey, had a twofold Obligation upon them; the first was to preserve the Interest of the whole Body, to which they still were bound, and were to shew it upon such Occasions as required it. The

next

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next was to take particular Care of these Shares which belonged to themselves, so as to improve them for their Service, and to protect them from the Invasion of others. And Although this Division of Property was not made by any Antecedent Law, yet being once made, and so useful to Mankind, the Violation of it, by taking that which is anothers Right, is a manifest Violation of the Law of Nature.

I do not think, that the Distribution of Ecclesiastical Cures, for the greater Benefit of the People, is of so strict a Nature; because the Matter of Property doth not extend to this Case in such a manner. But since an Universal Good is carried on by such a Division far better than it could be without it, there is an Obligation lying on all Persons who regard it, to preserve that Order which conduces to so good an End. And

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I cannot see how any Persons can better justify the Breach of Parochial Communion as such, than others can justify the Altering the Bounds of Mens Rights and Properties, because they apprehend that the common Good may be best promoted by returning to the first Community of all things.

If our Blessed Saviour, or his Holy Apostles in the first founding of Churches, had determined the Number of Persons, or fixed the Bounds of Places within which those who were ordained to so holy a Function, were to take care of the Souls committed to them, there could have been no Dispute about it among those who owned their Authority. But their Business was to lay down the Qualifications of such as were fit to be employed in it; to set before them the Nature of their Duties, and the Account they must give of the Discharge of them; and to Exhort all such as under-

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dertook it to a Watchfulness, and Diligence in their Places ; but they never go about to limit the Precincts, within which they were to Exercise the Duties incumbent upon them.

When Churches were first planted in several Countries, there could be no such things expected as Parochial Divisions ; for these were the Consequents of the General spreading of Christianity among the People. As is evident in the best Account we have of the Settlement of the Parochial Clergy among us, after Christianity was received by the Saxons. Which was not done all at once, but by several Steps and Degrees. It cannot be denied by any, that are conversant in our Histories, that the Nation was gradually converted from Paganism by the successful Endeavours of some Bishops and their Clergy in the several Parts of England.

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Not by Commission from one Person (as is commonly supposed) but several Bishops came from several Places, and applied themselves to this Excellent Work, and God gave them considerable Success in it. Thus Bizinus did great Service among the West-Saxons ; and Felix the Burgundian among the East-Saxons ; and the Northern Bishops in the Midland-Parts, as well as Augustin and his Companions in the Kingdom of Kent. And in these Midland-parts, as Christianity increased, so the Bishops Sees were multiplied (Five out of One) and placed in the most convenient Distances for the further enlarging and establishing Christianity among the People. The Bishops were Resident in their own Sees, and had their Clergy then about them, whom they sent abroad, as they saw cause, to those Places where they had the fairest

fairest Hopes of Success. And according thereto they either continued or removed them, having yet no fixed Cures or Titles. All the first Titles were no other than being entred in the Bishops Register, as of his Clergy, from which Relation none could discharge himself, without the Bishop's Consent. But as yet the Clergy had no Titles to any particular Places, there being no fixed Bounds of Parishes, wherein any Persons were obliged to be Resident for the better Discharge of their Duties. This State of an Unfixed and Itinerant Clergy was soon found to be very inconvenient; and therefore all Incouragement was given, where Christianity most prevailed, for the building Churches at a convenient Distance from the Cathedral, and settling a Number of Presbyters together there, which were after called Collegiate-Churches; and
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the Great and Devout Men of that Time gave them Liberal Endowments that they might the better attend the Service of God there, and in the Countrey about them.

But after that the several Parts grew to be more populous, and Lords of Manors, for the Conveniency of themselves and their Tenants, were willing to erect Churches within their Precincts, Laws were then made, that they might detain one Share of the Tithes for the Supply of this New Church; the other two remaining due to the Mother-Church. And I can find nothing like any Allowance for the Lords of Manors to appropriate the other Two Parts as they thought fit. For those Manors themselves were but Parcels of larger Parishcs; and the Tithes were due from those Estates, which were no part of their Manors, and therefore they had nothing to do with them.

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But after the Norman Invasion, the poor Parochial Clergy being Saxons, and the Nobility and Bishops Normans, they regarded not how much they reduced the Inferiour Clergy, to enrich the Monasteries belonging to the Normans, either at home or abroad. And this I take to be the true Reason of the Multitude of Appropriations of Two Thirds of the Tithes in the Norman Times, and too often with the Consent of the Bishops, who ought to have shewed more Regard to the Interest of the Parochial Clergy than they generally did. Pag. 277, &c.

But of this I have discoursed more at large in one of the following Cases.

In the latter end of the Saxon Times, if we believe those called the Confessors Laws, after all the Danish Devastations, there were Three or Four Churches where there had been but One before. By which it appears that the Parochial Clergy

were

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were Numerous before the Conquest. And within this Diocess, in Two Deanaries of it, there are to be found in Doomsday-Book above Twenty Parish-Churches : In the Deanary of Warwick, Ten; and in the Deanary of Kingstone, Fifteen : But of the former Seven were Appropriated in the Norman Times; and of the latter, Ten; by which we may see to how low a Condition they then brought the Parochial Clergy. One Church in the former Deanary I find built in that time, and that was at Exhal; which was before a Chapel to Salford, but was erected in the time of H. 1. by the Lord of the Manor and Freeholders, who gave the Glebe and Tithes, as appears by the Confirmation of Simon Bishop of Worcester. Many other Parochial Churches, I doubt not, were built and endowed after the same manner, although the Records of them are lost. And as Churches
were

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were new erected, the Parochial Bounds were fixed, that the People might certainly know whither they were to resort for Divine Worship, who were bound to attend them as part of their Charge, from whose Hands they were to receive the Holy Sacraments, and whose Advice and Counsel they were to take in Matters which related to the Salvation of their Souls. Now here lies the main Difficulty with some People; they cannot think that Parochial Bounds are to determine them in what concerns the Good of their Souls; but if they can edifie more by the Parts and Gifts of another, they conclude, that it is their Duty to forsake their own Minister, and go to such a one as they like. I meddle not with extraordinary Occasions of Absence, nor with the Case of Scandalous Incumbents, because it is the Peoples Fault if they be not prosecuted, and the Place supplied by better Men.

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Men. But the Case, as it ought to be put, is, how far a Regard is to be shewed to a Constitution so much for the General Good, as that of Parochial Communion is. We do not say, That Mens Consciences are bound by Perambulations, or that it is a Sin at any time to go to another Parish; but we say, That a constant fixed Parochial Communion, tends more to preserve the Honour of God, and the Religion Established among us, to promote Peace and Unity among Neighbours, and to prevent the Mischief of Separation. And what advances so good Ends, is certainly the best Means of Edification: Which lies not in moving the Fancies, or warming the Passions, but in what brings Men to a due Temper of Mind, and a holy, peaceable, and unblameable Conversation. And as to these Excellent Ends, it is not only your Duty with great

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great Zeal and Diligence to persuade your People to them; but to go before them your selves in the Practice of them. For they will never have any hearty Regard or Esteem for what any one says, if they find him to contradict it in the Course of his Life. Suppose it be the Peoples Fault to shew so little Regard to your Profession; yet you are bound to consider how far you may have given too much Occasion for it, and their Fault can be no Excuse for you, if any of your own were the true Occasion of theirs.

We live in an Age wherein the Conversations of the Clergy are more observed than their Doctrines. Too many are busie in finding out the Faults of the Clergy, the better to cover their own; and among such Priest-craft is become the most popular Argument for their Infidelity. If they could once make it appear;
b that

that all Religion were nothing but a Cheat and Imposture of some cunning Men for their own Advantage, who believed nothing of it themselves; and that all the business of our Profession was to support such a Fraud in the World for our own Interest, they were very excusable in their most bitter Invectives against such Priest-craft. For nothing is more to be abhorred by Men of Ingenious Minds, and Natural Probity, than to be the Instruments of Deceiving Mankind in so gross a manner. But, thanks be to God, this is very far from being the Case among us; for our Profession is built upon the Belief of God and Providence, the Differences of Good and Evil, and the Rewards and Punishments of another Life. If these things have no Foundations, we are certain that the best, and wisest, and most disinterested Men in all Ages have been in the same

same Fundamental Mistakes. And it is now somewhat too late for any Persons to set up for Sagacity and true Judgment in these Matters, above all those of foregoing Ages. There is a mighty Difference between slight and superficial Reasonings, (although some may be vain enough to cry them up for Oracles) and those which are built on the Nature of Things, and have born the Test of so many Ages, and remain still in the same Degree of Firmness and Strength, notwithstanding all the Batteries of Profane and Atheistical Wits. For it cannot be denied, that such there have been in former times as well as now; but that makes more for the Advantage of Religion, that our Modern Pretenders are fain to borrow from the old Stock; and scarce any thing worth Answering hath been said by them, but hath been often said, and with more Force by their

b 2 Masters.

Masters. And the best Philosophers of this Age have given up the Cause of Atheism as indefensible; so that the Being of God and Providence seems to be established by a General Consent; and if any secretly be of another Mind, they think it not for their Reputation to own it.

The main Pretence now is against Revealed Religion; but without offering to shew how so great and considerable a Part of Mankind as the Christian Church hath been made up of, came to be so imposed upon, as to a Doctrine which advances Morality to the greatest Height, and gives Mankind the most assured Hopes of a Blessed Immortality, when nothing like Interest and Design as to this World, could be carried on by the First and Greatest Promoters of it.

*Histoire des
Ouvrages des
Sçavans,
Août, 1697.
p. 551.*

But we are told in a late Complaint made abroad by a Friend of our Deists (wherein I am particularly

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concerned) That we make Objections for them which are most easie to answer, and pass over their most considerable Difficulties. Which is a very unjust Charge, and cannot be made good but by producing those Considerable Difficulties which we have taken no Notice of. For my part, I know of none such: and we make no Objections for them; however, we may think it our Duty to lay open the Weakness of them, when we are importuned to do it; which was my Case in the Treatise I suppose he refers to. If they keep their Considerable Difficulties to themselves, I know not how we should be able to answer them. But it is the common way in a baffled Cause still to pretend, that the main Difficulties were not produced.

But this is not a proper Occasion to insist longer on these Matters; my present Business is to answer the Ob-

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jection

jection which immediately regards the Clergy; and the Summ of it is, That our Profession rather hinders than confirms the Belief of Religion; because they who plead for what makes for their Interest, are always suspected to be swayed more by Interest than by Reason. To give a full and clear Answer to this, we must consider, That however Mankind are apt to be swayed by Interest, yet the Truth and Reason of Things do not at all depend upon them; for a Thing is not true or false in it self, because it makes for or against a Man; and the Measures of judging Truth and Falshood, are quite of another Nature; and so Mens Interests come not into Consideration. So that in this Case they are not to examine whose Turn is served, whether such a Thing be true or false; but whether there be sufficient Evidence to convince an impartial Mind of the Truth of it;

it; for let the Reasons be produced by whom they please, the Grounds of Conviction are the same. If a Man in a Dispute about Surveying a piece of Land, which he claimed a Right to, should appeal to the Elements of Geometry in his Case, would the Evidence be less because he was concerned in the Land?

But we proceed farther; Suppose it be for the Interest of Religion in a Nation, for an Order of Men to be set apart on purpose to attend the Services of it; and that there should be great Incouragements for their Education; and a Maintenance set apart for their Subsistence afterwards, that they may not live in Dependance on the Humours and uncertain Fancies of the People; how can such a Constitution take off from the Credibility of that Religion which they are to support? Was it any lessening to the Authority of the Law of Moses,

that the Tribe of Levi was so plentifully provided for by God's own Appointment? They were to teach the Law to the People in the Places where they were dispersed among the several Tribes: And suppose it had been then said, Why should we believe what you say, when you live by it? You have Cities, and Lands, and Tithes, and Oblations, and Dignities among you; no wonder you set up this Law as Divine and Holy; but we get nothing by it, but part with a Share of our Profits to maintain you? What then? Was the Law therefore false, and Moses an Impostor? These are hard Consequences, but they naturally follow from such a Supposition. And if such an Inference were not reasonable then, neither will it appear to be so now.

But we do not pretend that the Parochial Settlement of our Clergy is by such a Divine Law as the Levitical

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tical Priesthood was; but this we do insist upon, That the Christian Religion being owned and established in the Nation, there was a necessary Reason from the Nature of it, and the Obligation to Preserve and Support it, that there should be an Order of Men set apart for that End, that they should instruct the People in it, and perform the several Offices belonging to it; and that a sufficient Maintenance be allowed them by the Law of the Land to support them in doing their Duties. And I appeal to any Men of Sense or of common Understanding, whether on Supposition that our Religion is true, these be not very just and reasonable Things? How then can that make a Religion suspected to be false, which are very reasonable, supposing it to be true? If it be true, as most certainly it is, are not they bound to maintain it to be true? And can it be

be the less so, because their Subsistence depends upon it? Therefore all the Impertinent Talk of our Profession being a Trade, can signifie nothing to any Men that understand the Difference between Scarron and Euclid, or the way of Burlesquing and of Demonstration.

There is still one common Prejudice to be removed, and that is, That too many of those who preach up our Religion, as true, do not live as if they believed it to be so. We are very sorry, there should be any Occasion given for such a Reproach as this; and we hope there are not so many Instances of it, as some would have it believed. Woe be to those by whom such Offences come. But supposing the Instances true, is there any Religion in the World, considering the Follies and Infirmities of Mankind, which can secure all the Professors of it from acting against
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the Rules of it ? But if such Instances are sufficiently proved, there ought to be the greater Severity used in such Cases ; because Religion it self, as well as the Honour of our Church, suffers so much by them.

But it will still be said, That these Persons are secret Infidels, and believe nothing of what they profess.

This is another Point, how far bad Lives are consistent with sound Opinions : Some that think that Men act consistently, will not allow that Bad Men can be any other than meer Infidels ; but others who consider the Prevalency of Mens Lusts and Passions over their Reasons, are apt to think that they may retain their good Opinions, even when they act contrary to them : But then their Consciences fly in their Faces, and they condemn themselves for their evil Actions. And then these very
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Instances are an Argument against Infidelity; for we may justly presume, that they would shake off their Fears of another World, if they could. But why should some Instances of this Nature signify more against Religion, than the many Remarkable Examples of a Godly, Righteous and Sober Life among the Clergy, to a stronger Confirmation of it? For they have had greater Occasion of searching into all the Considerable Difficulties about Religion, than others can pretend to; and I do not know any that have employed most Time and Pains about it, but have had greater Satisfaction as to the Truth and Excellency of it.

Thus I have endeavoured to remove the most common Prejudices of our Times, against our Profession. It would now be proper for me to give some particular Directions to you, but that is so much the business

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ness of the following Discourses, that I shall refer you to them; and commend you to the Grace and Blessing of Almighty God, that you may so carefully discharge your Duties in this World, that it may advance your Happiness in another. I am

Your Affectionate Friend

Hartlebury C.
Apr. 23. 1698.

and Brother

EDW. WIGORN.

ERRATA.

Preface, pag. viii. lin. 7. read *Birinus*. p. xii. l. 7. r. *Kington*. P. 26. L. 21. after *fraudes* add *C.* p. 126. l. 11. f. *Birinus*. p. 129. l. 9. r. *Wulstan*. p. 142. l. 7. r. *Floke* *Wulgo* to. p. 157. l. 17. after *but* insert *to persuade you*. p. 226. l. 5. for *more* r. *meer*. p. 236. l. 9. for *Titles* r. *Tubes*. p. 241. l. 9. f. *Geordus*. p. 254. l. 17. r. *Guthrum*. p. 256. l. 17. for *than* r. *as*.

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THE
BISHOP
 OF
 WORCESTER'S
CHARGE
 TO THE
 CLERGY of his DIOCESE,
 In his *Primary Visitation*,
 begun at *Worcester*, Sep-
 tember 11th. 1690.

My Brethren,

THIS being my *Primary Visitation*, I thought it fitting to acquaint my self with the Ancient as well as Modern Practice of *Episcopal Visitations*, and as near as

B I

Of the Duties and Rights

I could, to observe the Rules prescribed therein, with respect to the Clergy, who are now summoned to appear. And I find there were two principal Parts in them, a *Charge* and an *Enquiry*.

The *Charge* was given by the *Bishop* himself, and was called *Admonitio Episcopi*, or *Allocutio*; wherein he informed them of their Duty, and exhorted them to perform it.

Regino. l. 2.
p. 205.
Hispan. Con-
cil. p. 29.

The *Enquiry* was made according to certain Articles drawn out of the *Canons*, which were generally the same; according to which the *Juratores Synodi* (as the ancient Canonists call them; or *Testes Synodales*) were to give in their *Answers* upon Oath; which was therefore called *Juramentum Synodale*; for the *Bishop's Visitation* was accounted an *Episcopal Synod*.

Regino Collect.
Canon. lib. 2.
p. 204.
Burchard. l. 1.
c. 91, 92.
Gratian 35.
q. 5. c. 7.

The former of these is my present business; and I shall take leave to speak my Mind freely to you, this first

of the Parochial Clergy.

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first time, concerning several things which I think most useful, and fit to be considered and practised by the Clergy of this *Diocese*.

For, since it hath pleased God, by his wise and over-ruling Providence, (without my seeking) to bring me into this Station in his Church, I shall esteem it the best Circumstance of my present Condition, if he please to make me an Instrument of *doing good* among you. To this end, I thought it necessary *in the first place*, most humbly to implore his Divine Assistance, that I might both rightly understand, and conscientiously perform that great Duty which is incumbent upon me ; for without his help, all our Thoughts are vain, and our best Purposes will be ineffectual. But God is not wanting to those who sincerely endeavour to know, and to do their Duty ; and therefore *in the next place*, I set my self (as far as my Health and o-

Of the Duties and Rights

ther Occasions would permit) to consider the *Nature* and *Extent* of my Duty ; with a Resolution not to be discouraged, altho I met with Difficulties in the Performance of it. For such is the State and Condition of the World, That no Man can design to do good in it ; but when that crosses the particular *Interests* and *Inclinations* of others, he must expect to meet with as much Trouble as their unquiet Passions can give him.

If we therefore consulted nothing but our own Ease, the only way were to let People follow their Humours and Inclinations, and to be as little concerned as might be, at what they either say or do. For if we go about to rowze and awaken them, and much more to reprove and reform them, we shall soon find them uneasy and impatient ; for few love to hear of their Faults , and fewer to amend them.

But

But it is the peculiar Honour of *the Christian Religion*, to have an Order of Men set apart, not meerly as *Priests*, to offer *Sacrifices* (for that all Religions have had) but as *Preachers of Righteousness*, to set Good and Evil before the People committed to their Charge; to inform them of their Duties, to reprove them for their Miscarriages; and that, not in order to their Shame, but their Reformation: Which requires not only *Zeal*, but *Discretion*, and a great Mixture of *Courage* and *Prudence*, that we may neither fail in doing our Duty, nor in the best means of attaining the end of it.

If we could reasonably suppose, that all those who are bound to tell others their Duties, would certainly do their own, there would be less need of any such Office in the Church as that of *Bishops*; who are to inspect, and govern, and visit, and reform

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those who are to watch over others. But since there may be too great failings even in these ; too great neglect in some, and disorder in others ; too great proneness to Faction and Schism, and impatience of Contradiction from mere Equals ; therefore St. Jerom himself grants, That to avoid these Mischiefs, there was a necessity of a Superiour Order to Presbyters in the Church of God ; *ad quem omnis Ecclesie cura pertineret, & Schismatum semina tollerentur* ; as he speaks, even where he seems most to lessen the Authority of Bishops. But whatever some Expressions of his may be, (when the Bishop of Jerusalem and the Roman Deacons came into his head) his Reasons are very much for the Advantage of Episcopal Government. For can any Man say more in point of Reason for it, than *that nothing but Faction and Disorder followed the Government of Presbyters, and therefore*
the

*Hieron. Comment. ad Titum.
Epist. ad Evagr.*

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the whole Christian Church agreed in the Advers. Luciferian. necessity of a higher Order, and that the Peace and Safety of the Church depends upon it ; that if it be taken away, nothing but Schisms and Confusions will follow. I wish those who magnifie S. Jerom's Authority in this matter, would submit to his Reason and Authority both, as to the Necessity and Usefulness of the Order of Bishops in the Church.

But beyond this, in several places, he makes the Bishops to be Successors Hier. in Psal. ad Evagr. Ad Mircel. Cyprian. Ep. 3. 66. Aug. in Ps. 44. 44. Ambros. ad Eph. 4. 11. 1 Cor. 12. 28. Theod. ad 1 Tim. 1. 3. of the Apostles, as well as the rest of the most Eminent Fathers of the Church have done. If the Apostolical Office, as far as it concerns the Care and Government of Churches, were not to continue after their Decease, how came the best, the most learned, the nearest to the Apostolical Times, to be so wonderfully deceiv'd ? For if the Bishops did not succeed by the Apostles own Appointment, they must be Intruders and Usurpers of the Apo-

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stolical *Function*; and can we imagine the Church of God would have so universally consented to it? Besides, the Apostles did not die all at once; but there were *Successors* in several of the *Apostolical Churches*, while some of the *Apostles* were living: Can we again imagine, those would not have vindicated the *Right* of their own *Order*, and declared to the Church, That *this Office* was peculiar to themselves? The Change of the Name from *Apostles* to *Bishops*, would not have been sufficient Excuse for them; for the Presumption had been as great in the Exercise of the Power without the Name. So that I can see no *Medium*, but that either the Primitive Bishops did succeed the *Apostles* by their own Appointment and Approbation, (which *Irenaeus* expressly affirms, *Qui ab Apostolis ipsis instituti sunt Episcopi in Ecclesiis*) or else those who governed the Apostolical

Iren. l. 3. c. 3.

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9

stolical Churches after them, out-
went *Diotrephes* himself; for he only
rejected those whom the *Apostles* sent;
but *these* assumed to *themselves* the
Exercise of an *Apostolical* Authority o-
ver the Churches planted and settled
by them. ^{3 John 9, 10.}

But to let us see how far the *Apo-*
stles were from thinking that this
Part of their *Office* was peculiar to
themselves, we find them in their
own time, as they saw occasion, to
appoint others to take care of the
Government of the Churches, with-
in such bounds as they thought fit.
Thus *Timothy* was appointed by St. ^{1 Tim. 3.}
Paul at *Ephesus*, to examine the Qua-
lifications of such as were to be Or-
dained; and not to lay hands suddenly
on any; to receive *Accusations*, if there
were cause, even against *Elders*; to
proceed judicially before two or three
Witnesses: and if there were Reason,
to give them a publick Rebuke. And ^{20.}
that

21.

Titus 1. 5.

that this ought not to be thought a slight matter, he presently adds, I charge thee before God, and the Lord Jesus Christ, and the elect Angels, that thou observe these things, without preferring one before another, doing nothing by partiality. Here is a very strict and severe Charge for the Impartial Exercise of Discipline in the Church upon Offenders. And although in the Epistle to Titus, he be only in general required to set in order the things that are wanting, and to ordain Elders in every City, as he had appointed him; yet we are not to suppose, that this Power extended not to a Jurisdiction over them when he had Ordained them. For if any of those whom he Ordained (as believing them qualified according to the Apostles Rules) should afterwards demean themselves otherwise, and be self-willed, froward, given to Wine, Brawlers, Covetous, or any way scandalous

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ous to the Church, can we believe that *Titus* was not as well bound to correct them afterwards, as to examine them before? And what was this Power of *Ordination* and *Jurisdiction*, but the very same which the *Bishops* have exercised ever since the *Apostles* Times? But they who go about to *Unbishop Timothy* and *Titus*, may as well *Unscripture the Epistles* that were written to them; and make them only some particular and occasional Writings, as they make *Timothy* and *Titus* to have been only some particular and occasional Officers. But the Christian Church preserving these *Epistles*, as of constant and perpetual use, did thereby suppose the same kind of Office to continue, for the sake whereof those excellent *Epistles* were written: And we have no greater Assurance that these *Epistles* were written by *St. Paul*, than we have that there were *Bishops* to succeed the

Apostles

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Apostles in the Care and Government of Churches.

Having said thus much to clear the Authority we act by, I now proceed to consider the *Rules* by which we are to govern our selves.

Every *Bishop* of this Church, in the time of his Consecration makes a solemn Profession, among other things, " That he will not only
" maintain and set forward, as much
" as lies in him, quietness, love and
" peace among all Men; but that he
" will correct and punish such as be
" unquiet, disobedient, and crimi-
" nous within his Diocese, accor-
" ding to such Authority as he hath
" by *God's Word*, and to him shall
" be committed by the *Ordinance* of
" this *Realm*.

So that we have two *Rules* to proceed by, viz. *The Word of God*, and the *Ecclesiastical Law* of this *Realm*.

(1.) By

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(1) *By the Word of God* ; and that requires from us, Diligence, and Care, and Faithfulness, and Impartiality, remembering the Account we must give, that we may do it with Joy and not with Grief. And we are not meerly required to correct and punish, but to warn and instruct, and exhort the Persons under our Care, to do those things which tend most to the Honour of our holy Religion, and the Church whereof we are Members. And for these Ends there are some things I shall more particularly recommend to you.

(1.) That you would often consider the Solemn Charge that was given you, and the Profession you made of your Resolution to do your Duty at your Ordination.

I find by the Provincial Constitution *De voto & voti Redempt.* of this Church, that the Bishops were *Lyndw. f. 103.* to have their solemn Profession read over to them twice in the year, to put them

in

Concil. Anglic.
vol. 2. f. 182.

Constit. Orthon.
f. 292.

Concil. Angl.
vol. 2. f. 227.

Constit. Provinc. De Officio Archiepiscopii Presbyteri, f. 33. Concil. Anglic. vol. 1. p. 183.

in mind of their Duty. And in the Legatine Constitutions of Orthon, (22 H. 3.) the same Constitution is renewed, not meerly by a Legatine Power, but by Consent of the Archbishops, and Bishops of both Provinces; wherein it is declared, That Bishops ought to visit their Diocesses at fit times, Correcting and Reforming what was amiss, and sowing the Word of Life in the Lord's Field; and to put them the more in mind of it, they were twice in the year to have their solemn Profession read to them. It seems then, that Profession contained these things in it; or else the reading that could not stir them up to do these things. What the Profession was which Presbyters then made at their Ordination, we have not so clear an Account, but in the same Council at Oxford, 8 H. 3. it is strictly enjoined, That all Rectors and Vicars should instruct the People committed to their Charge, and Feed them

them, *Pabulo Verbi Dei*, with the Food of God's Word; and it is introduced with that Expression, that they might excite the Parochial Clergy to be more diligent in what was most proper for those times. And if they do it not, they are there called *Canes muti*: and Lyndwood bestows many other hard Terms upon them, which I shall not mention; but he saith afterward, those who do it not, are but like Idols, which bear the similitude of a Man, but do not the Offices proper to Men. Nay, he goes so far as to say, That the Spiritual Food of God's Word is as necessary to the Health of the Soul, as Corporal Food is to the Health of the Body. Which Words are taken out of a Preface to a Canon in the *Decretals de Officio Jud. Ordinarii, inter cetera*. But they serve very well to shew how much even in the dark times of Popery, they were then convinced of the Necessity and Usefulness of Preaching.

Lyndw. v. latriatu f. 33. V. Pabulo V. Dei.

* *Prov. Con-
stit. De Offic.
Arch-Presbyt.
f. 282.
Concil. Anglic.
vol. 2. p. 332.*

*Concil. Anglic.
vol. 2. p. 700,
707.*

ing. These *Constitutions* were slighted so much, that in 9 *Edw.* 1. the Office of *Preaching* was sunk so low, that in a * *Provincial Constitution* at that time, great Complaint is made of the *Ignorance and Stupidity of the Pa- rochial Clergy*, that they rather made the *People worse than better*. But at that time the *Preaching Friars* had got that Work into their Hands by particular Priviledges, where it is well observed, That they did not go to Places which most needed their help, but to Cities and Corporations, where they found most Incouragement. But what Remedy was found by this Provincial Council? Truly, every *Parochial Priest* four times a year was bound to read an *Explication of the Creed, Ten Commandments, the Two Precepts of Charity, the Seven Works of Mercy, the Seven deadly Sins, the Seven principal Vertues, and the Seven Sacraments.*

This was renewed in the Province of
York,

York, (which had distinct Provincial Constitutions) in the time of Edw. 4. And here was all they were bound to by these Constitutions.

But when Wickliff and his Followers had awakened the People so far, that there was no satisfying them without Preaching, then a new Provincial Constitution was made under Arundel, Archbishop of Canterbury; and the former Constitution was restrained to Parochial Priests who officiated as Curates; but several others were Authorized to Preach; as (1.) The Mendicant Friars were said to be Authorized *jure communi*, or rather *Privilegio speciali*, (but therefore Lyndwood saith, it is said to be *jure communi*, because that Privilege is recorded in the Text of the Canon Law) these were not only allowed to preach in their own Churches, but in *Plateis publicis*, saith Lyndwood, out of the Canon Law (wherein those

*Concil. Anglic.
2 vol. p. 649.
Constit. de hæ-
ret. f. 156.*

Lyndw. f. 156.

*C. Dudum.
Clem. de Se-
pulturis.*

C

words

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words were expressed) and at any hour , unless it were the time of preaching in other Churches ; but other Orders, as *Augustinians* and *Carmelites*, had no such general License. Those preaching Friars were a sort of *Licensed Preachers* at that time, who had no Cures of Souls ; but they were then accounted a kind of *Pastors*. For *Jo. de Athon.* distinguisheth two sorts of *Pastors* ; Those who had Ecclesiastical Offices, and those who had none, but were such only *Verbo & Exemplo* ; but they gave very great disturbance to the Clergy, as the Pope himself confesses in the Canon Law. (2.) *Legal Incumbents* authorized to preach in their own Parishes *Jure scripto*. All Persons who had Cures of Souls, and Legal Titles, were said to be *missi à Jure ad locum & populum curæ suæ*, and therefore might preach to their own People without a *special License* ; but

Jo. de Athon.
in Constitut.
Orthobon. f. 46.

C. Dudum de
Sepulchris.

but if any one preached in other parts of the *Diocess*, or were a Stranger in it, then he was to be examined by the *Diocesan*, and if he were found *tam Moribus quam Scientia idoneus*, he might send him to preach to one or more Parishes, as he thought meet; and he was to shew his *License* to the *Incumbent* of the Place, before he was to be permitted to preach, under the *Episcopal Seal*. And thus, as far as I can find, the Matter stood as to *Preaching*, before the *Reformation*.

After it, when the Office of *Ordination* was reviewed and brought nearer to the *Primitive Form*; and instead of delivering the *Chalice* and *Patten*, with these words, *Accipe potestatem offerre Deo Sacrificium*, &c. the Bishop delivered the *Bible* with these words, *Take thou Authority to Preach the Word of God, and to Minister the Holy Sacraments in the Congregation*,

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gation, &c. The Priests Exhortation was made agreeable thereto, wherein he exhorts the Persons in the
 " Name of our Lord Jesus Christ,
 " to consider the Weight and Im-
 " portance of the Office and Charge
 " they are called to ; not barely to
 " instruct those who are already of
 " Christ's Flock, but to endeavour
 " the Salvation of those who are in
 " the midst of this naughty World.
 " And therefore he perswades and
 " charges them from a due regard to
 " Christ, who suffered for his Sheep,
 " and to the Church of Christ, which
 " is so dear to him, to omit no Labor,
 " Care or Diligence in instructing
 " and reforming those who are com-
 " mitted to their Charge. And the
 " better to enable them to perform
 " these things, there are some Duties
 " especially recommended to them,
 " viz. Prayer, and Study of the Ho-
 " ly Scriptures, according to which
 " they

“ they are to instruct others, and
“ to order their own Lives, and
“ of those who belong to them. And
“ that they might the better attend
“ so great a Work, they are required
“ to forsake and set aside (as much
“ as they may) all worldly Cares
“ and Studies , and apply them-
“ selves wholly to this one thing,
“ that they may save themselves
“ and them that hear them. After
which follows the solemn *Profession*,
wherein they undertake to do these
things.

This is that, my Brethren, which
I earnestly desire of you, that you
would often consider. You are not
at liberty now, whether you will do
these things or not ; for you are
under a most solemn Engagement
to it. You have put your Hands to
the Plough, and it is too late to think
of looking back ; and you all know
the Husbandman's Work is laborious

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and painful, and continually returning. It is possible after all his Pains, the Harvest may not answer his Expectation ; but yet if he neither plows nor sows, he can expect no Return ; if he be idle and careless, and puts off the main of his Work to others, can he reasonably look for the same Success ? Believe it, all our Pains are little enough to awake the sleepy and secure Sinners, to instruct the Ignorant, to reclaim the Vitious, to rebuke the Profane, to convince the Erroneous, to satisfy the Doubtful, to confirm the Wavering, to recover the Lapsed, and to be useful to all, according to their several Circumstances and Conditions. It is not to preach a Sermon or two in a Weeks Time to your Parishioners, that is the main of your Duty ; that is no such difficult Task, if Men apply their minds as they ought to do to Divine Matters,

ters, and do not spend their Retirements in useleſs Studies; but the great Difficulty lies in Watching over your Flock, *i. e.* knowing their Condition, and applying your ſelves ſuitably to them. He that is a Stranger to his Flock, and only viſits them now and then, can never be ſaid to *watch over it*; he may watch over the *Fleeces*, but he underſtands little of the State of his Flock, *viz.* of the Diſtempers they are under, and the Remedies proper for them.

Non poteſt eſſe Paſtoris excuſatio, ſi lupus oves comedit, & Paſtor neſcit. Extr. de Reg. Juris c. 10.

The *Casuiſts* ſay, That the Reason why there is no Command for Personal Reſidence in Scripture, is, becauſe the Nature of the Duty requires it; for if a Perſon be required to do ſuch things which cannot be done without it, Reſidence is implied. As a Pilot to a Ship, needs no Command to be in his Ship; for how can he do the Office of a Pilot out of it? Let none think to excuſe themſelves by ſaying,

Reginald. Praxis, l. 30. tr. 3. c. 5. p. 52.

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that our Church only takes them for Curates, and that the Bishops have the Pastoral Charge; for by our old Provincial Constitutions (which are still in force so far as they are not repugnant to the Law of the Land) even those who have the smallest Cures are called *Pastors*; and Lyndwood there notes, that *Parochialis Sacerdos dicitur Pastor*; and that not meerly by way of Allusion, but in respect of the Care of Souls. But we need not go so far back. For what is it they are admitted to? Is it not *ad curam Animarum*? Did not they promise in their Ordination, To teach the People committed to their Care and Charge?

The Casuists distinguish a three-fold Cure of Souls. 1. *In foro interiori tantum*, and this they say is the *Parochial Cure*. 2. *In foro exteriori tantum*, where there is Authority to perform Ministerial Acts, as to suspend, excommunicate, absolve, (*sine Pastore*

Pastorali Curâ :) and this Archdeacons have by Virtue of their Office. 3. *In utroque simul*, where there is a special Care, together with Jurisdiction: this is the Bishops. And every one of these, say they, *secundum commune Jus Canonicum*, is obliged to Residence, i. e. by the common Law Ecclesiastical; of which more afterwards. The Obligation is to perpetual Residence, but as it is in other positive Duties, there may other Duties intervene, which may take away the present force of it; as care of Health, necessary Business, publick Service of the King or Church, &c. But then we are to observe that no Dispensation can justifie a Man in point of Conscience, unless there be a *sufficient Cause*; and no Custom can be sufficient against the natural Equity of the Case, whereby every one is bound from the Nature of the Office he hath undertaken.

*Joh. Arbon.
ad Constit.
Othob. f. 14.*

*Reginald. ib.
n. 53.*

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Can. Relatum
Ex. de Cleri-
cis non Resid.

Lyndw. in c.
juum hostis.
Resideant cum
effectu.

Foh. de Athon.
in Constit. O-
rthon. f. 14.
Continui.

I confess the case in Reason is different, where there is a sufficient Provision by another fit Person, and approved by those who are to take care that Places be well supplied, and where there is not; but yet, this doth not take off the force of the *Personal Obligation*, arising from undertaking the Cure themselves, which the Ecclesiastical Law understands to be, not meerly by Promise, but *cum effectu*, as the Canonists speak; which implies personal Residence. Not that they are never to be away; *Non sic amare intelligi debet, ut nunquam inde recedat*, saith Lyndwood; but these Words are to be understood *civili modo*, as he expresses it, i. e. not without great Reason. There must not be, saith he, *callida Interpretatio, sed talis ut cessent fraudes negligentiae*, i. e. There must be no Art used to evade the Law, nor any gross Neglect of it. It's true, the

Cano.

Canonists have distinguished between *Rectories* and *Vicarages*, as to *Personal Residence*; but we are to consider these things. 1. The *Canon Law* strictly obliges every one that hath a *Parochial Cure* to perpetual *Residence*, and excepts only two Cases, when the *Living* is annexed to a *Prebend* or *Dignity*; and then he who hath it, is to have a perpetual *Vicar* instituted, with a sufficient *Maintenance*. 2. After this *Liberty* obtained for dignified Persons to have *Vicars* endowed in their *Places*, the *Point of Residence* was strictly enjoined to them: and we find in the *Provincial Constitutions* a Difference made between *Personatus* and *Vicaria*; but this was still meant of a *Vicarage* endowed. This was in the time of *Stephen Langton*, *Archbishop of Canterbury*; and in another *Constitution* he required an *Oath of Personal Residence* from all such *Vicars*, altho'

*Can. Extrin-
pand. De Præ-
bend. & Dign.*

*De Præsumpt.
f. 55. 2.*

*De Clericis
non Resident.
cum hostis,
&c.*

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altho' the Place were not above the Value of Five Marks; which, as

Lyndw. f. 34.
Joh. de Athon.
in Constit. O-
thon. f. 12.

appears by *Lyndwood* elsewhere, was then sufficient for Maintenance and Hospitality. And to cover the shameful Dispensations that were commonly granted to the higher Clergy, under pretence of the Papal Power, the poor Vicars by a Constitution of O-

Ordo de Instit.
Vic. f. 14.
Orbobon. f. 46.

tho, were bound to take a strict Oath of continual Residence; and without it their Institution was declared to be Null. But even in that case the Gloss there saith, That they may be some time absent for the Benefit of the Church or State; but not for their own particular Advantage.

3. The Obligation in point of Conscience remains the same, but Dispensing with Laws may take away the Penalty of Non-residence in some cases. *Joh. de Athon.* Canon of Lincoln, who wrote the Glosses on the Legatine Constitutions, doth not deny, but that

Joh. de Athon.
in Constit.
Orbon.

that *Rectors* are as well bound to *Residence* as *Vicars*; but these are more strictly tied by their Oath; and because a Vicar cannot appoint a Vicar, but a *Parson* may. And altho' that Name among some be used as a Term of Reproach, yet in former Ages *Personatus* and *Dignitas* were the same thing; and so used here in *England* in the time of *Henry* II. but afterwards it came to be applied to him that had the *Possession* of a *Parochial Benefice* in his own immediate *Right*; and was therefore bound to take care of it. For the Obligation must in Reason be supposed to go along with the Advantage; however Local Statutes may have taken off the Penalty.

Can. Quia nonnulli de Clericis non Resid. Quadril. l. 1. c. 5.

II. When you have thus considered the Obligation which lies upon you, to take care of your Flock, let me in the next place recommend to you a plain, useful, and practical Way

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Way of *Preaching* among them. I mean such as is most likely to do good upon them (which certainly ought to be the just Measure of *Preaching*.) I do not mean therefore a loose and careless way of Talking in the Pulpit, which will neither profit you, nor those that hear you. He that once gets an ill Habit of speaking *extempore*, will be tempted to continue it by the Easiness of it to himself, and the Plausibleness of it to less judicious People. There is on the other side, a closeness and Strength of Reasoning, which is too elaborate for common Understandings; and there is an affected Fineness of Expression which by no means becomes the Pulpit: but it seems to be like stroaking the Consciences of People by Feathers dipt in Oil. And there is a way of putting *Scripture-Phrases* together without the Sense of them, which those are the most apt

to

I to admire, who understand them
do least: But for those who have not
nly improved their Minds by Education,
of the plainest way is certainly the best
fore and hardest, provided, it be not flat,
alk- and dry, and incoherent, or desul-
her tory, going from one thing to ano-
ou- ther, without pursuing any particu-
e of lar Point home to Practice, and ap-
d to plying it to the Consciences of the
im- Hearers. And give me leave to tell
less you, That meer general Discourses
the have commonly little Effect on the
gth Peoples Minds; if any thing moves
oo- them, it is *particular Application* as to
g's; such things which their Consciences
of are concerned in.

And here I must recommend to
be you the pursuing the Design of His
be *Majesties Letter*, which hath been
eo- some time since communicated to
nd you; by it you are required to
re- Preach at some Times on those par-
of ticular Vices which you observe to
pt be
to

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be most prevalent in the Places you relate to, such as *Drunkenness, Whoredom, Swearing, Profaning the Lord's Day, &c.* If ever we hope to reform them, you must thoroughly convince them, that what they do is displeasing to God.

And there are two sorts of Men you are to deal with,

1. Profane Scoffers at Religion. These seldom trouble you; but if any good be to be done upon them, it is by plain and evident Proofs of the Good and Evil of Moral Actions. For, as long as they think them indifferent, they will never regard what you say, as to the Rewards or Punishments of them.

2. Stupid and senseless People, whose Minds are wholly sunk into the Affairs of the World, *buying and selling and getting Gain.* It is a very hard thing to get a Thought into them above these Matters, And what-

ever

ever you talk of meer Religion, and another Life, is like *Metaphysicks* to them; they understand you not, and take no care to do it: but if you can convince them, that they live in the Practice of great Sins, which they shall certainly suffer for, if they do not Repent, they may possibly be awakened this way; if not, nothing but immediate Grace can work upon them; which must work on the Will, whatever becomes of the Understanding.

III. After preaching, let me intreat you to look after *Catechizing* and instructing the Youth of your Parishes. He that would reform the World to purpose, must begin with the Youth; and train them up betimes, in the Ways of Religion and Virtue. There is far less probability of prevailing on those who have accustomed themselves to vicious Habits, and are hardened in their Wickedness. It

D

seems

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seems strange to some, that considering the shortness of Human Life, Mankind should be so long before they come to Maturity ; the best Account I know of it, is, that there is so much longer time for the Care of their Education, to instill the Principles of Virtue and Religion into them, thereby to soften the Fierceness, to direct the Weakness, to govern the Inclinations of Mankind. It is truly a sad Consideration, that Christian Parents are so little sensible of their Duties, as to the Education of their Children ; when those who have had only natural Reason to direct them, have laid so much Weight upon it. Without it, Plato saith, that Mankind grew the most unruly of all Creatures. Aristotle, That as by Nature they are capable of being the best, so being neglected, they become the worst of Animals, i. e. when they are brought up without Virtue. Education and
Virtue,

Plato de Leg.
l. 6.

Arist. Polit.
l. 1. c. 2.

Nicom. l. 2.
c. 1. 7. c. 7.

Virtue
it is a
much
Care
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learn
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Virtue, saith he, is a great thing, yea, it is all in all, and without it they will be much worse than Beasts. The main Care of the Education of Children must lie upon Parents ; but yet Ministers ought not only to put them in mind of their Duty, but to assist them all they can, and by publick Catechizing, frequently to instruct both those who have not learned, and those who are ashamed to learn any other way. And you must use the best means you can to bring them into an Esteem of it ; which is by letting them see, that you do it, not meerly because you are required to do it, but because it is a thing so useful and beneficial to them, and to their Children. There is a great deal of difference between Peoples being able to talk over a Set of *Phrases*, about Religious Matters, and understanding the true Grounds of Religion ; which are easiest learned, and

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understood, and remembred in the short Catechetical Way. But I am truly sorry to hear, that where the Clergy are willing to take pains this way, the People are unwilling to send their Children. They would not be unwilling to hear them instructed, as early as might be, in the way to get an Estate, but would be very thankful to those who would do them such a kindness; and therefore it is really a Contempt of God and Religion, and another World, which makes them so backward to have their Children taught the Way to it. And methinks those who have any Zeal for the Reformation, should love and pursue that which came into Request with it. Indeed the Church of Rome it self hath been made so sensible of the Necessity of it, that even the Council of Trent doth not only require Catechizing Children, but the Bishops to proceed with Ecclesiastical

*Seff. 24. de
Reform. c. 4.*

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stical Censures against those who neglect it. But in the old Provincial Constitutions I can find but one Injunction about Catechizing; and that is when the Priest doubts whether the Children were Baptized or not; and if they be born eight days before Easter and Whitsontide, they are not to be Baptized till those days, and in the mean time they are to receive Catechism. What is this receiving Catechism by Children, before they are eight days old? It is well Exorcism is joyned with it; and so we are to understand by it the Interrogatories in Baptism: and Lyndwood saith, the Catechism is not only required for Instruction in Faith, but propter sponsonem, when the Godfather answers, *De Fidei Observantiâ*.

It is true, the Canon Law requires in adult Persons Catechizing before Baptism; but I find nothing of the catechizing Children after it; and no wonder, since Lyndwood saith, the Laity

Lyndw. Prov.
Cost. f. 134,
135.
Concil. Anglic.
2 Vol. 324,
330.

De Consecr.
Dist. 4. c. 54,
57.

Lynd. f. 1. 11.
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are bound to no more than to believe as the Church believes ; nor the Clergy neither, unless they can bear the Charges of studying, and have Masters to instruct them. This was good Doctrine, when the Design was to keep People in Ignorance. For Learning is an irreconcilable Enemy to the Fundamental Policy of the Roman Church; and it was that which brought in the Reformation, since which a just Care hath still been required for the Instruction of Youth ; and the Fifty ninth Canon of our Church is very strict in it, which I desire you often to consider with the first Rubrick after the Catechism, and to act accordingly.

IV. After *Catechizing*, I recommend to you the due Care of bringing the Children of your Parishes to *Confirmation*. Which would be of excellent use in the Church, if the several Ministers would take that pains about

about it, which they ought to do. Remember that you are required to bring or send in Writing, with your Names subscribed, the Names of all such Persons in your Parish, as you shall think fit to be presented to the Bishop to be confirmed. If you take no care about it, and suffer them to come unprepared for so great, so solemn a thing, as renewing the Promise and Vow made in Baptism, can you think your selves free from any Guilt in it? In the Church of Rome indeed great care was taken to hasten Confirmation of Children all they could: *Post Baptismum quam citius* poterint, as it is in our Constitution Provincial; in another Synodical, the Parochial Priests are charged to tell their Parishioners, that they ought to get their Children confirmed as soon as they can. In a Synod at Worcester, under Walter de Cantilupo, in the time of Henry III. the Sacrament of Con-

Provinc. Constit.
De Sacra
Unct. f. 18.
Concil. Angl.
2. Vol. p. 353.

Concil. Angl.
Vol. 2. p. 140,
 165.

p. 373.

p. 440.

p. 143.

firmation is declared necessary for Strength against the Power of Darkness; and therefore it was called *Sacramentum pugnantium*: and no wonder then that the Parochial Priests should be called upon so earnestly to bring the Children to Confirmation; and the Parents were to be forbidden to enter into the Church, if they neglected it for a Year after the Birth of the Child, if they had opportunity. The Synod of Exeter allowed two Years, and then if they were not Confirmed, the Parents were to Fast every Friday, with Bread and Water, till it were done. And to the same purpose, the Synod of Winchester in the time of Edw. I. in the Constitutions of Richard, Bishop of Sarum, two Years were allowed, but that time was afterwards thought too long; and then the Priest as well as the Parents was to be suspended from Entrance into the Church. But what preparation was required?

required? None that I can find : But great care is taken about the *Fillets* to bind their *Heads* to receive the *Unction*, and the taking them off at the *Font*, and burning them, lest they should be used for *Witchcraft*, as *Lyndwood* informs us. *Lyndw. f. 19.* But we have no such Customs, nor any of the Reformed Churches: We depend not upon the *Opus operatum*, but suppose a due and serious preparation of Mind necessary, and a solemn Performance of it. I hope, by God's Assistance, to be able, in time, to bring the Performance of this Office into a better Method ; in the mean time I shall not fail doing my Duty ; have you a care you do not fail in yours.

V. As to the *Publick Offices* of the Church, I do not only recommend to you a due Care of the *Diligent*, but of the *Devout* Performance of them. I have often wondred how a fixed and stated Liturgy for general

ral Use, should become a matter of Scruple and Dispute among any in a Christian Church, unless there be something in Christianity which makes it unlawful to pray together for things which we all understand beforehand to be the Subject of our Prayers. If our common Necessities and Duties are the same; if we have the same Blessings to pray, and to thank God for in our solemn Devotions, why should any think it unlawful or unfitting to use the same Expressions? Is God pleased with the change of our Words and Phrases? Can we imagine the Holy Spirit is given to dictate new Expressions in Prayers? Then they must pray by immediate Inspiration (which I think they will not pretend to, lest all the Mistakes and Incongruities of such Prayers be imputed to the Holy Ghost) but if not, then they are left to their own Conceptions, and the Spirits Assistance

ance is only in the exciting the Affections and Motions of the Soul towards the things prayed for ; and if this be allowed, it is impossible to give a Reason why the Spirit of God may not as well excite those inward Desires, when the Words are the same as when they are different. And we are certain, that from the Apostles times downwards, no one Church or Society of Christians can be produced, who held it unlawful to pray by a Set-Form. On the other side, we have very early Proofs of some common Forms of Prayer, which were generally used in the Christian Churches, and were the Foundations of those *Ancient Liturgies*, which, by degrees were much enlarged. And the Interpolations of later times, do no more overthrow the Antiquity of the Ground-work of them, than the large Additions to a Building, do prove there was no House before. It

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is an easie matter to say, that such Liturgies could not be *St. James's* or *St. Mark's*, because of such Errors and Mistakes, and Interpolations of Things and Phrases of later times; but what then? Is this an Argument there were no Ancient Liturgies in the Churches of *Jerusalem* and *Alexandria*, when so long since, as in *Origen's* time we find an entire Collect produced by him out of the *Alexandrian* Liturgy? And the like may be shewed as to other Churches, which by degrees came to have their Liturgies much enlarged by the devout Prayers of some extraordinary Men, such as *S. Basil* and *S. Chrysostom* in the Eastern Churches.

*Orig. in Jur.
Hom. 14. p. 14.
Ed. Huet.*

But my Design is not to vindicate our use of an excellent Liturgy, but to put you upon the using it in such manner, as may most recommend it to the People. I mean with that Gravity, Seriousness, Attention, and Devotion,

Devotion, which becomes so solemn a Duty as Prayer to God is. It will give too just a cause of prejudice to our Prayers, if the People observe you to be careless and negligent about them ; or to run them over with so great haste, as if you minded nothing so much as to get to the end of them. If you mind them so little your selves, they will think themselves excused, if they mind them less. I could heartily wish, that in greater places, especially in such Towns where there are People more at liberty, the constant Morning and Evening Prayers were duly and devoutly read ; as it is already done with good Success in *London*, and some other Cities. By this means Religion will gain ground, when the publick Offices are daily performed ; and the people will be more acquainted with Scripture, in hearing the Lessons, and have a better esteem
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of the Prayers, when they become their daily Service, which they offer up to God as their Morning and Evening Sacrifice ; and the Design of our Church will be best answered, which appoints *the Order for Morning and Evening Prayer daily to be said, and used throughout the Year.*

VI. As to the *Dissenters* from the Church ; the present Circumstances of our Affairs require a more than ordinary *Prudence* in your Behaviour towards them. It is to no purpose to provoke or exasperate them, since they will be but so much more your Enemies for it ; and if you seem to court them too much, they will interpret your Kindness to be a liking their Way better than your own ; so that were it not for some worldly Interest, you would be just what they are ; which is in effect to say, you would be Men of Conscience, if ye had a little more Honesty. For they
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can never think those honest Men, who comply with things against their Consciences, only for their temporal Advantage; but they may like them as Men of a Party, who under some specious Colours, promote their Interest. For my own part, as I do sincerely value and esteem the Church of *England* (and I hope ever shall) so I am not against such a due temper towards them, as is consistent with the preserving the Constitution of our Church. But if any think, under a pretence of Liberty, to undermine and destroy it, we have Reason to take the best care we can, in order to its preservation. I do not mean by opposing Laws, or affronting Authority, but by countermining them in the best way, *i. e.* by out-doing them in those things which make them most popular, if they are consistent with Integrity and a good Conscience. If they gain up-
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on the People by an Appearance of more than ordinary Zeal for the good of Souls, I would have you to go beyond them in a true and hearty Concernment for them ; not in irregular Heats and Passions, but in the *Meekness of Wisdom*, in a calm and sedate Temper; in doing good even to them who most despitefully reproach you, and withdraw themselves, and the People from you. If they get an Interest among them by Industry, and going from Place to Place, and Family to Family ; I hope you will think it your Duty to converse more freely and familiarly with your own People. Be not *Strangers*, and you will make them *Friends*. Let them see by your particular Application to them, that you do not despise them. For Men love to value those who seem to value them ; and if you once slight them, you run the hazard of making them your Enemies. It is
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fright them, and we think we have Reason enough on our side to persuade them. The Case of Separation stands just as it did in Point of Conscience, which is not now one jot more reasonable or just than it was before. Some think Severity makes Men consider; but I am afraid it heats them too much, and makes them too violent and refractory. You have more Reason to fear now, what the Interest of a Party will do, than any Strength of Argument. How very few among them understand any Reason at all for their Separation! But Education, Prejudice, Authority of their Teachers sway them; remove these, and you convince them. And in order thereto, acquaint your selves with them, endeavour to oblige them, let them see you have no other Design upon them, but to do them good; if any thing will gain upon them, this will.

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But if after all, they grow more headstrong and insolent by the Indulgence which the Law gives them ; then observe, whether they observe those Conditions on which the Law gives it to them. For these are known Rules in Law, *That he forfeits his Privilege who goes beyond the Bounds of it ; That no Privileges are to be extended beyond the Bounds which the Laws give them ; for they ought to be observed as they are given.* I leave it to be considered, whether all such who do not observe the Conditions of the Indulgence, be not as liable to the Law, as if they had none.

11. Q. 3. c. 63.
Lyndw. ad L.
de Pœnis.
f. 161.
Extr. de Priv.
c. Porro. in
Gloss.

But there is a very profane Abuse of this Liberty among some, as tho' it were an Indulgence not to serve God at all. Such as these, as they were never intended by the Law, so they ought to enjoy no Benefit by it : For this were to countenance Profaneness and Irreligion, which I

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am afraid, will grow too much upon us, unless some effectual Care be taken to suppress it.

VII. There is another Duty incumbent upon you, which I must particularly recommend to your Care, and that is, of *Visiting the Sick*. I do not mean barely to perform the Office prescribed, which is of very good Use, and ought not to be neglected; but a particular Application of your selves to the State and Condition of the Persons you visit. It is no hard matter to run over some Prayers, and so take leave; but this doth not come up to the Design of our Church in that Office: For, after the general Exhortation and Profession of the Christian Faith, our Church requires, That *the sick Person be moved to make special Confession of his Sins, if he feel his Conscience troubled with any weighty matter; and then if the sick Person humbly and heartily*
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desires it, he is to be absolved after this manner, Our Lord Jesus Christ, who hath left Power in his Church to absolve all Sinners who truly repent and believe in him, &c. Where the power of Absolution is grounded upon the Supposition of true Faith and Repentance; and therefore when it is said afterwards, And by his Authority committed to me, I absolve thee from the same, &c. it must proceed on the same Supposition. For the Church cannot absolve when God doth not. So that all the real Comfort of the Absolution depends upon the Satisfaction of the person's Mind, as to the Sincerity of his Repentance and Faith in Christ. Now here lies the great Difficulty of this Office; how to give your selves and the wounded Conscience Satisfaction, as to the Sincerity of those Acts; I do not mean as to the Sincerity of his present Thoughts, but as to the Acceptable-

ness of his Faith and Repentance with God, in order to Remission of Sins. But what if you find the Persons so ignorant, as not to understand what Faith and Repentance mean? What if they have led such careless and secure lives in this World, as hardly ever to have had one serious Thought of another? Is nothing to be done but to come and pray by them, and so dismiss them into their Eternal State? Is this all the good you can, or are bound to do them? I confess it is a very uncomfortable thing to tell Men how they are to begin to live, when they are liker to die than to live (and the People generally have a strange superstitious Fear of sending for the Minister, while there is any hope of Recovery.) But at last you are sent for; and what a melancholy Work are you then to go about? You are, it may be, to make a Man sensible of his Sins, who
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never before considered what they were, or against whom they were committed, or what eternal Misery he deserves by committing them. But I will suppose the best I can in this Case, *viz.* That by your warm and serious Discourse, you thoroughly awaken the Conscience of a long and habitual Sinner ; what are you then to do ? Will you presently apply all the Promises of Grace and Salvation to one whose Conscience is awakened only with the Fears of Death, and the Terrors of a Day of Judgment ? This, I confess, is a hard Case ; on the one side, we must not discourage good Beginnings in any ; we must not cast an awakened Sinner into Despair ; we must not limit the infinite Mercy of God : But on the other side, we must have a great care of encouraging presumptuous Sinners to put off their Repentance to the last, because then upon Con-

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fession of their Sins, they can so easily obtain the Churches Absolution, which goes no farther, than *truly Repenting and Believing*. But here is the difficulty, how we can satisfy our selves that these do *truly Repent and Believe*, who are out of a Capacity of giving Proof of their Sincerity by Amendment of Life? I do not question the Sincerity of their present Purposes; but how often do we find those to come to nothing, when they recover and fall into the former Temptations? How then shall they know their own Sincerity till it be tried? How can it be tried, when they are going out of the State of Trial? The most we can do, is to encourage them to do the best they can in their present Condition, and to shew as many of the Fruits of true Repentance as their Circumstances will allow; and with the greatest Humility of Mind, and most earnest

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Supplications to implore the infinite Mercy of God to their Souls. But besides these, there are many Cases of sick Persons, which require very particular Advice, and Spiritual Direction, which you ought to be able to give them, and it cannot be done without some good Measure of Skill and Experience in casuistical Divinity. As, How to satisfy a doubting Conscience, as to its own Sincerity, when so many Infirmities are mixed with our best Actions? How a Sinner who hath relapsed after Repentance, can be satisfied of the Truth of his Repentance, when he doth not know, but he may farther relapse upon fresh Temptations? How he shall know what Failings are consistent with the State of Grace, and the Hopes of Heaven, and what not? What Measure of Conviction and Power of Resistance is necessary to make Sins to be wilful and presumptuous? What
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the just Measures of Restitution are in order to true Repentance, in all such Injuries which are capable of it? I might name many others, but these I only mention to shew how necessary it is for you to apply yourselves to *Moral and Casuistical Divinity*, and not to content your selves barely with the Knowledge of what is called *Positive and Controversial*. I am afraid there are too many who think they need to look after no more than what qualifies them for the Pulpit; (and I wish all did take sufficient care of that) but if we would do our Duty as we ought, we must inquire into, and be able to resolve Cases of Conscience. For *the Priests Lips should keep this kind of Knowledge; and the People should seek the Law at his Mouth; for he is the Messenger of the Lord of hosts, Mal. 2. 7.* If this held in the Levitical Priesthood, much more certainly under the Gospel,

spel, where the Rates and Measures of our Duties are not to be determined by Levitical Precepts, but by the general Reason and Nature of Moral Actions.

VIII. Among the Duties of *Publick Worship*, I must put you in mind of a *Frequent Celebration of the Lord's Supper*. There is generally too great a Neglect of this, which is the most proper part of *Evangelical Worship*. The Duties of *Prayers and Praises*, are excellent and becoming Duties, as we are Creatures with respect to our Maker and Preserver. The Duty of hearing the Word of God read and explained, is consequent upon our owning it to be the Rule of our Faith and Manners; and all who desire to understand and practise their Duty, can never despise or neglect it. But that solemn Act of Worship wherein we do most shew our selves Christians, is the celebrating the *Holy Eucha-*

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Eucharist. For, therein we own and declare the infinite Love of God in sending his Son into the World to die for Sinners, in order to their Salvation; and that this is not only a true Saying, but worthy of all Men to be credited. Therein, we lift up our Hearts, and give Thanks to our Lord God; we joyne with Angels and Archangels in lauding and magnifying his glorious Name. Therein, we not only commemorate the Death and Sufferings of our Lord, but are made Partakers of his Body and Blood, after a Real, but Sacramental Manner. Therein we offer up our selves to God, to be a Reasonable, Holy and Lively Sacrifice unto him. Therein we Adore and Glorifie the ever Blessed Trinity; and humbly implore the Grace and Assistance of our ever Blessed Mediator. And what now is there in all this, which is not very agreeable to the Faith, Hope and Charity of Christians? Nay,

Nay, what Duty is there, which so much expressees all these together, as this doth? Nor, whereby we may more reasonably expect greater Supplies of Divine Grace to be bestowed upon us? What then makes so many to be so backward in this Duty, which professes a Zeal and Forwardness in many others? If we had that Warmth and Fervor of Devotion, that Love to Christ, and to each other, which the primitive Christians had, we should make it as constant a part of our publick Worship, as they did; but this is not to be expected. Neither did it always continue in the Primitive Church, when Liberty, and Ease, and worldly Temptations made Persons grow more remiss and careless in the solemn Duties of their Religion.

S. *Chrysostom* takes notice in his time of the different Behaviour of Persons, with respect to the holy Eucharist.

In Hebr. Hom. 17.

In Epist. Hom. 3.

charist. There were some who pretended to greater Holiness and Austerity of Life than others, who withdrew from the common Conversation of Mankind, and so by degrees from joining in the Acts of publick Worship with them. Which did unspeakable Mischief to Christianity; for then the Perfection of the Christian Life, was not supposed to consist in the Active Part of it, but in Retirement and Contemplation. As tho' our highest Imitation of Christ lay in *following him into the Wilderness to be tempted of the Devil; and not in walking as he walked*, who frequented the Synagogues, and went about doing good.

But this way of Retirement happening to be admired by some great Men, the Publick Worship came to be in less esteem; and others upon Reasons of a different Nature, withdrew themselves from such Acts of De-

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Devotion as required a stricter Attendance, and a more prepared Temper of Mind. And there were some who did abstain, because they were not so well satisfied with themselves as to their own Preparations ; and such as these *S. Chrysostom* seems to favour, rather than such who came often without due care, as to the whole Course of their Lives ; only out of custom, or out of regard to the Orders of the Church. From hence many thought it better to forbear, as long as they did it not out of Contempt. And so by degrees the People were content to look on it as a Sacrifice for them to be performed by others, rather than as an Office, wherein they were to bear a part themselves ; at least, they thought once or thrice a Year sufficient for them. And to this, as appears by our old *Provincial Constitutions*, they were forced by severe *Canons*.

*Concil. Angl.
Tom. 2. p. 144,
166, 299.*

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When the Reformation began, this Disuse of this holy Sacrament was looked on, by the chief Reformers, as a great Abuse and Corruption crept into the Church, which ought by all means to be reformed; and the frequent Celebration of it set up in the Reformed Churches. But unreasonable Scruples in some, and Misapprehensions in others, and a general Coldness and Indifference, as to Matters of Religion, have hitherto hindered the Reviving this Primitive Part of Devotion among us.

I do not go about to determine the Frequency in your Parishes, which the Scripture doth not as to the Christian Church, but supposes it to be *often done*; but I may require you to take care that Christ's Institution be observed among you; and that with your utmost care, both as to the Decency and Purity of it.

The

Calvin. Instit.

l. 4. c. 17. n. 44.

Pet. Martyr.

L. C. l. 4. c. 10.

n. 48.

In 1 Cor. 11.

p. 55.

Bucer in

Matth. 16.

p. 186.

The last thing I recommend to you all, is, *To have a great care of your Conversations.* I do not speak it out of a distrust of you ; I hope you do it already : and your Case will be so much worse, if you do it not, because you very well know how much you ought to do it. For the Honour of God and Religion, and the Success of your Ministry, as well as your own Salvation, depend very much upon it. Lead your Flock by your Example, as well as by your Doctrine, and then you may much better hope that they will follow you ; for the People are naturally *Spies* upon their *Ministers*, and if they observe them to mind nothing but the World all the Week, they will not believe them in earnest, when on the Lords Days they perswade them against it. And it takes off the Weight of all Reproof of other Mens Faults, if those they reprove have reason to believe

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them guilty of the same. I do not think it enough for a *Preacher of Righteousness* merely to avoid open and scandalous Sins, but he ought to be a great Example to others in the most excellent Virtues which adorn our Profession, not only in *Temperance and Chastity*, in *Justice and ordinary Charity*, but in a readiness to do good to all, in forgiving Injuries, in loving Enemies, in evenness of Temper, in Humility and Meekness, and Patience, and Submission to God's Will, and in frequent Retirements from the World, not merely for Study, but for Devotion. If by these and such things you *shine as Lights* among your People, they will be more ready to follow your Conduct; and in probability you will not only stop their Mouths, but gain their Hearts. For among all the Ways of advancing the Credit and Interest of the Church of *England*, one of the most successful

ful will be the diligent Labours, and the exemplary Lives of the Clergy in it.

But if Men will not regard their own, or the Churches Interest in this matter ; if they will break their Rules in such a manner, as to dishonour God, and the Church, and themselves by it; then you are to consider the next thing I was to speak to, which is,

II. What *Authority* is given to us for the punishing *Offenders* in our *Diocesses* by the *Ecclesiastical Law* of this Realm. For this we are to consider, That our *Authority* herein is not derived from any modern *Canons* or *Constitutions* of this Church (altho' due Regard ought to be shewed to them) but from the ancient *Common Law Ecclesiastical* in this Realm, which still continues in force. For as there is a *Common Law* with respect to *Civil Rights*, which depends not on the *Fendal Constitutions*, altho' in many

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things it be the same with them ; but upon *ancient Practice*, and *general Consent* of the People from Age to Age. So, I say, there is a *Common Law Ecclesiastical*, which altho' in many things it may be the same with the *Canon Law*, which is read in the Books; yet it hath not its force from any *Papal* or *Legatine Constitutions*, but from the *Acceptance and Practice* of it in our Church. I could easily shew (if the time would permit) that *Papal* and *Legatine Constitutions* were not received here, altho' directed hither; that some *Provincial Constitutions* never obtained the Force of *Ecclesiastical Laws*; but my business is to shew what did obtain and continue still to have the Force of such *Ecclesiastical Laws* among us.

2 Inst. 632.

By the Statute of 25 H. 8. c. 19. it is declared, " That such Canons, " Constitutions, Ordinances, and Synodals Provincial being already " made,

“made, which be not contrariant
“nor repugnant to the Laws, Sta-
“tutes, and Customs of this Realm,
“nor to the Damage or Hurt of the
“King’s Prerogative Royal, shall
“now still be used and executed as
“they were afore the making of this
Act, &c. It’s true, a *Review* was
appointed, but such Difficulties were
found in it, as to the shaking the
Foundations of the *Ecclesiastical Law*
here, that nothing was ever legally
established in it; and therefore this
Law is still in force.

In the *Statute 25 H. 8. c. 21.* it is
said, “That this Realm Recogni-
“zing no Superiour under God but
“the King, hath been, and is free
“from Subjection to any Man’s
“Laws, but only to such as have
“been Devised, Made, and Observed
“within this Realm, for the Wealth
“of the same: or to such other, as by
“the Sufferance of the King and his

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“ Progenitors, the People of this
 “ Realm have taken at their free Li-
 “ berty, by their own Consent, to
 “ be used amongst them, and have
 “ bound themselves by long Use and
 “ Custom to Observance of the same,
 “ not as to the Observance of the
 “ Laws of any Foreign Prince, Po-
 “ tentate, or Prelate, but as to the
 “ Customs and ancient Laws of this
 “ Realm, originally established, as
 “ Laws of the same, by the said
 “ Sufferance, Consent, Custom, and
 “ none otherwise.

All that I have now to do, is to
 shew what *Authority* the *Bishops* had
 over the *Clergy* by the *Ancient Eccle-*
siastical Law of this Realm; and what
Censures they were liable to for some
 particular Offences.

I. By the *Ecclesiastical Law* the Bi-
 shop is Judge of the *Fitness* of any
 Clerk presented to a *Benefice*. This is
 confessed by the Lord Coke in these
 Words :

Words : And the Examination of the Ability and Sufficiency of the Person presented, belongs to the Bishop, who is the Ecclesiastical Judge, and in the Examination he is a Judge, and not a Minister, and may and ought to refuse the Person presented, if he be not *Persona idonea*. But this is plain to have been the Ancient Ecclesiastical Law of this Realm, by the *Articul. Cleri* in *Edw. II.* time, *De Idoneitate Personæ presentatæ ad Beneficium Ecclesiasticum pertinet Examinatio ad Judicem Ecclesiasticum, & ita est hæcenus usitatum, & fiat in futurum.*

² Inst. 632.

By the Provincial Constitutions at Oxford in the time of *Hen. III.* the Bishop is required to admit the Clerk who is presented, without Opposition, within two Months, *dum tamen idoneus sit*, if he thinks him fit. So much time is allowed, *propter Examinationem*, saith *Lyndwood*; even when there is no Dispute about

Provinc. Conf. quon secund. f. 71.

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Right of Patronage. The main thing he is to be examined upon, is his *Ability to discharge his Pastoral Duty*, as Coke calls it; or as Lyndwood saith, whether he be *commendandus Scientia & Moribus*. As to the former, the Bishop may judge himself; but as to the latter, he must take the *Testimonials* of others; and I heartily wish the Clergy would be more careful in giving them, by looking on it as a *Matter of Conscience*, and not meerly of *Civility*; for otherwise it will be impossible to avoid the pestering the Church with scandalous and ignorant Wretches. If the Bishop refuses to admit within the time (which by the Modern Canons is limited to Twenty eight Days after the Presentation delivered) he is liable to a *Duplex Querela* in the Ecclesiastical Courts, and a *Quare impedit* at Common Law; and then he must certify the Reasons of his Refusal. In *Spe-*

Can. 95.

cot's

cor's Case it is said, That in 15 Hen.

7. 7, 8. all the Judges agreed, that the 5 Rep. 57.

Bishop is Judge in the Examination, and therefore the Law giveth Faith and Credit to his Judgment. But because

great Inconveniencies might otherwise happen, the general Allegation is not sufficient, but he must certifie

specially and directly; and the general Rule is, and it was so resolved by the Judges, That all such as are suf-

ficient Causes of Deprivation of an Incumbent, are sufficient Causes to refuse a Presentee. But by the Canon Law

* more are allowed. In the Constitutions of Othobon, the Bishop is required particularly to enquire into

the Life and Conversation of him that is presented; and afterwards, that if a Bishop admits another who

is guilty of the same Fault for which he rejected the former, his Institution is declared null and void. By the

Canon Law, if a Bishop maliciously refuses

* Multa impediunt promovendum, quæ non de-jiciunt. Gloss. in c. 15. de Vir. & Honest. Cleric. C. Christiano, f. 63.

De Jure Patron. c. Pastoralis Officii.

*Gloss. in Can.
& malitiosé.*

*Moor 26 El. 3.
3 Cr. 27.*

Can. 39.

refuses to admit a fit Person, he is bound to provide another Benefice for him; but our Ecclesiastical Law much better puts him upon the Proof of the Cause of his Refusal. But if the Bishop doth not examine him, the Canonists say it is a Proof sufficient that he did it *malitiosé*. If a Bishop once rejects a Man for Insufficiency, he cannot afterwards accept or admit of him; as was adjudged in the Bishop of *Hereford's* Case. If a Man brings a Presentation to a Benefice, the Bishop is not barely to examine him as to Life and Abilities, but he must be satisfied that he is in Orders. How can he be satisfied, unless the other produce them? How can he produce them, when it may be they are lost? What is to be done in this Case? The Canon is express, *That no Bishop shall institute any to a Benefice, who hath been Ordained by any other Bishop,* (for if he

he Ordained him himself, he cannot
 after reject him, because the Law
 supposes him to have examined and
 approved him) except he first shew
 unto him his Letters of Orders, and
 bring him a sufficient Testimony of
 his former good Life and Behaviour, if
 the Bishop shall require it, and lastly,
 shall appear upon due Examination to
 be worthy of the Ministry. But yet in
 Palmes and the Bishop of Peterbo-
 rough's Case, it was adjudged, That
 no Lapse did accrue by the Clerk's
 not shewing his Orders, for the Bishop
 upon his not coming to him again,
 collated after six Months. But the
 Court agreed, That the Clerk ought
 to make Proof of his Orders, but
 they differed about the manner of
 their Proof. *Andersen* said, The Bi-
 shop might give him his Oath. But
 if a Proof were necessary, and the
 Clerk did not come to make Proof,
 it seems to me to be a very hard
 Judgment.

II. The

3 Cr. 341.
 1 Leon. 230.

*Regino l. 1.
c. 5, 6, 7, 8, 10.
Baluz. ad Re-
ginon. p. 531.*

*Concil. Anglic.
vol. 2. f. 124.*

II. The Bishop by the Ecclesiastical Law, is to visit his Diocess, and to take an account of the Clergy how they behave themselves in the Duties of their Places. By the eldest Canons I can find, the Bishops Visitation is supposed as a thing implied in his Office; whereby he is obliged to look after the good Estate of his whole Diocess, and especially of the Clergy in it. In the time of Hubert Archbishop of Canterbury, in the beginning of King John's time, Care is taken in the Canons then made, That Bishops should not be burdensome to the Clergy in the Number of the Attendants in their Visitations, which then were Parochial, and the Number allowed of Twenty or Thirty Horse, was too heavy for the Clergy to bear. And therefore by degrees it was thought fit to turn that Charge into a Certainty, which was the Original of Procurations. By the Fourth Council of To-

leda,

leda,

ledo, the Bishop was to visit his whole
 Diocess, Parochially, every Year. c. 10. q. 1.
 The Gloss saith, if there were occa- Episcopum,
Regino. l. 1.
 sion for it; and that the Bishop may c. 7.
 visit as often as he sees cause; but if
 he be hindered, the Canon saith, he
 may send others (which is the Ori-
 ginal of the Arch-Deacon's Visitation)
 to see not only the Condition of the Chur-
 ches, but the Lives of the Ministers.
 The Council of Braga in the latter Cuncil. Braga.
2. c. 1. 10. q. 1.
Placait.
 end of the Sixth Century, makes this
 the first Canon, That all Bishops
 should visit their Diocesses by Pa-
 rishes, andt here should first examine
 the Clergy, and then the People;
 and in another Canon he was requi-
 red to receive only his *Cathedraticum*,
i. e. a certain Sum in lieu of Enter-
 tainment; which came to be settled
 by Prescription. The Council of
 Cavailon in France, *A. D.* 831. fixed Cuncil. Cabil.
2. c. 14.
 no Sum, but desired the Bishops to
 be no Burdens to the Clergy in their
 parochial

De Censibus,
f. 121.
De Officio Vi-
carii c. quo-
niam V. Pro-
curari.

parochial Visitations. Lyndwood saith, the Ancient Procuration here, was a Day and Night's Entertainment; which after came to be a customary Payment: But however it was paid, it is an evident Proof of the Right of the Bishops Visitations by the Ancient Ecclesiastical Law; and by such a Custom as is allowable by the Rules of our Common Law.

III. There are some Faults which make the Clergy liable to Deprivation by Virtue of the Ecclesiastical Law, which was here received. I shall name only some of them, and conclude; these being sufficient for my present purpose.

Concil. Anglic.
vol. 2. 140,
200.

I. *Excessive Drinking.* All drinking (ad Potus equales) was absolutely forbidden to Clergymen, on pain of Suspension after Admonition; not only by a Synodical, but by a Provincial Constitution under Edmund, Archbishop of

of Canterbury. The Canon Law saith in that case, *ab Officio vel Beneficio suspendatur*: But our Constitution is more severe, *à Beneficio & Officio*. Extr. de Vita & Honestat. Cleric. c. 14. The Council of Oxford not only strictly forbids all Clergymen whatever tends to *Gluttony and Drunkenness*; but it requires the Bishops to proceed strictly against those who are guilty, according to the Form of the General Council, i. e. the *Lateran*, 4. viz. by *Admonition* first, and then *Suspension*. *Lyndwood* complains, That this was not so much looked after as it should be, because it brought no Profit; I hope that Reason will not hold among those who pretend to Reformation; which will be very defective, if it extend not to our Lives as well as our Doctrines: For there can be no greater Reproach than to see those loose and dissolute in their Conversations, who think it their Honour to be Ministers of a Reformed

*Epist. ad Jos.
Hall.*

formed Church. It was a stinging Reflection upon our Church by the Archbishop of Spalato, (who was no very strict Man himself) *That he saw nothing Reformed among us but our Doctrines.* I hope there was more of Satyr than of Truth in it; for I do not question, but there were many then (as there are now) of Exemplary Lives, and Unblameable Conversations ; but if there be any others, it will be the more shame not to proceed against them; since even before the Reformation, the Canons were so strict and severe in this matter. In the Council at *Westminster* in *Henry II.* time, under *Richard*, Archbishop of *Canterbury*, all Clergymen are forbidden going into Taverns to eat or drink, unless upon Travelling ; and the Sanction of this Canon is, *aut cesset, aut deponatur.* The same was forbidden in the Council at *York*, in the time of *Richard I.* in the Council at

*Concil. Anglic.
2 vol. 104.*

f. 122.

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at London under Hubert, in the time of King John. And since the Reformation the same Canon is renewed, That no Ecclesiastical Persons shall at any time, other than for their honest Necessities, resort to any Taverns or Ale-houses. And there have been Instances of the Severity of our Ecclesiastical Censures against Drunkenness in Clergymen. 126.
Can. 78.

In 8 Jac. Parker was deprived of his Benefice for Drunkenness, and moved for a Prohibition, but it was denied him. Brownlow's
Rep. f. 37.

In 9 Jac. another was deprived for the same Fault; and the Judges at Common Law allowed the Sentence to be good.

No doubt there are other Instances, but we had not known of these, if they had not been preserved in Books of Reports. Id. f. 70.

II. Incontinency. Lyndwood saith, Those who are proved to be guilty
G of

6 C. 14.

Hob. 293.

Owen 87.

1 Cr. 41. 789.

of it, are *ipso Jure privati*; but he thinks a Declaratory Sentence of the Ecclesiastical Judges necessary for the Execution of it. Since the Reformation, we have Instances of Deprivation for Adultery in our Law Books. One 12 Eliz. another 16 Eliz. a third 27 Eliz. These are enough to shew that the Ecclesiastical Law is allowed by the Judges of Common Law, to continue in sufficient Force for Deprivation in this Case.

III. Simony. Which is the Name given by the Ecclesiastical Law, to all Contracts for Gain in the disposing or obtaining any Ecclesiastical Promotion or Ministry. It is true, these do not come up to the very Sin of Simon Magus, which related to the immediate Gifts of the Holy Ghost; but because the whole Ministerial Office in all the parts of it (especially the Cure of Souls) is of a Spiritual Nature; and all Bargains are so repugnant

*Officium Cure
animarum est
precipuum ac
spiritualissimum
Dei
Donum. Cajetan.
in Act. 8.*

pugnant to the Design of it, therefore the Ecclesiastical Law hath fixed that detestable Name upon it : For, all *Contractus non gratuiti* in these things, savour of *turpe Lucrum*, and tend to bring in *turpe commercium* into the Church ; which would really overturn the whole Design of that Ministry, which was designed for the Salvation of Souls. And therefore it was necessary, that when Persons had received (by the Favour of Temporal Princes and other Benefactors, who were Founders of Churches) such Endowments as might encourage them in their Function, that severe Laws should be made against any such sordid and mischievous Contracts. And such there were here in England long before the excellent Stat. of 31 Eliz. c. 6. although it seems the Force of them was so much worn out, as to make that Statute necessary for avoiding of *Simony* ; which

is there explained to be *Corruption* in bestowing or getting Possession of Promotions Ecclesiastical.

Concil. Anglic.
vol. 2. p. 8, 10.

In a Council at London under Lanfranc, in the Conqueror's time, Simony was forbidden, under the Name of Buying and selling of Orders. And it could be nothing else before the Churches Revenue was settled: But in the time of Henry I. Ecclesiastical Benefices were forbidden to be bought or sold, and it was Deprivation then to any Clergyman to be convicted of it; and a Layman was to be Out-lawed, and Excommunicated, and Deprived of his Right of Patronage. And this was done by a Provincial Synod of that time.

p. 35.

p. 105.
Constit. Prov.
152.

In the Reign of Henry II. it was decreed, That if any Person received any Money for a Presentation, he was to be for ever deprived of the Patronage of that Church; and this was not meerly a Provincial Constitution,
but

but two Kings were present (*Hen. II.*
and his Son) and added their Au-
thority to it. This was not depri-
ving a Man of his Free-hold by a Ca-
non, as a Learned Gentleman calls
it; for here was the greatest Au-
thority, Temporal as well as Eccle-
siastical added to it.

Parsons
Councillor,
Sec. 5.

But we are told, *these Canons were*
of as little Effect as that of Othobon,
which made all Simoniackal Contracts void;
but some of the most judicious Law-
yers have held, that *Simony* being
contractus ex turpi causâ, is void be-
tween Parties.

Hob. 167.

All that I aim at is to shew, that
by our old Ecclesiastical Law, *Si-*
moniacus incurred a *Deprivation* and
Disability before the Stat. 31 Eliz.
and therein I have the Opinion of
a very Learned Judge concurring with
me.

1 Rolls 237.

IV, Dilapidations. By which the Ecclesiastical Law understands any considerable Impairing the Edifices, Woods, and Revenues belonging to Ecclesiastical Persons, by Virtue of their Places. For it is the greatest Interest and Concernment of the Church to have things preserved for the Good of Successors; and it is a part of common Justice and Honesty so to do. And the Lord Coke positively affirms, That Dilapidation is a good Cause of Deprivation. And it was so resolved by the Judges in the Kings Bench, 12 Jac. Not by Virtue of any new Law or Statute, but by the old Ecclesiastical Law. For which Coke refers to the Year-Books, which not only shew what the Ecclesiastical Law then was, but that it was allowed by the Common Law of England; and we are told, that is never given to change; but it may be forced to it by a New

Jo. de Athon.
in Constit. O-
thob. f. 55. 2.
35 E. 1.

11 R. 72.
3 Inst. 204.
Moor 917.
Godbolt 279.
Rolls 813.
29 E. 3. 16.
2 Hen. 4. 3.
11 Hen. 6. 20.
9 E. 4. 34.

Constit. O-
thob. f. 55. 2.

New Law, which cannot be pretended in this case. And by the Old Constitutions here received, the Bishops are required to put the Clergy in mind of keeping their Houses *Orthob. f. 55.2.* in sufficient Reparations, and if they do it not within two Months, the Bishop is to take care it be done out of the Profits of the Benefice. By the Injunctions of *Edw. VI.* and Queen *Elizabeth*, all Persons having Ecclesiastical Benefices, are required to set apart the Fifth of their Revenue to Repair their Houses; and afterwards to maintain them in good condition.

V. *Pluralities.* By the Ecclesiastical *Provinc. Constit. f. 59.* Law, which was here received, the actual receiving Institution into a second Benefice made the first void *ipso Jure*; and if he sought to keep both above a Month, the second was void too. *Lyndwood* observes, That the Ecclesiastical Law had

varied in this matter. And it proceeded by these Steps, (which are more than *Lyndwood* mentions.)

Lyndw. ib.
V. sit content.

10. q. 3. c.
Unio.

I. It was absolutely forbidden to have Two Parishes, if there were more than Ten Inhabitants in them, *because no Man could do his Duty in Both Places.* And if any Bishop neglected the Execution of it, he was to be Excommunicated for Two Months, and to be restored only upon promise to see this Canon executed.

Concil. Tolet.
16. c. 5.

21. q. 1. c. 1.
Clericus.

II. The Rule was allowed to hold, as to Cities, but an Exception was made as to small and remote Places, where there was a greater Scarcity of Persons to supply them.

Ex. de Præb. c.
referente.

III. If a Man had Two Benefices, it was left to his Choice, which he would have: but he could not hold both. This kind of Option was allowed by the *Ecclesiastical Law* then in force.

IV. That

IV. That if he takes a second Benefice, that Institution is void by the Third Council of Lateran, under Alexander 3.

*Ex. de Cleric.
Non-Resident.
c. quia non-
nulli.*

V. That by taking a second, the first is void; which is the famous Canon of the Fourth Lateran Council.

*Ex. de Prab.
c. de Multa.*

VI. That if he were not contented with the last, but endeavour to keep both, he should be deprived of both. And this was the Ecclesiastical Law as it was declared in our Provincial Constitutions. But the general Practice was to avoid the former, according to the Lateran Council. These were very severe Canons, but that one Clause of the Pope's Dispensing Power, made them to signifie little, unless it were to advance his Power and Revenue. For when the Dispensing Power came to be owned, the Law had very little Force; especially as to the

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the Consciences of Men. For if it were a Law of God, how could any man dispense with it? unless it were as apparent that he had given a Power in some Cases to *Dispense*, as that he had made the Law. Those Casuists are very hard put to it, who make Residence *Jure Divino*, and yet say the Pope may dispense with it; which at last comes only to this, That the Pope can authoritatively declare the sufficiency of the Cause: so that the whole matter depends upon the Cause; whether there can be any sufficient to excuse from Personal Residence.

It is agreed on all hands, that the habitual Neglect of a Charge we have taken upon our selves, is an evil thing, and that it is so to heap up Preferments meerly for Riches, for Luxury, or Ambition; but the main Question in point of Conscience

science is, What is a sufficient Cause to justify any Man's breaking so reasonable and just a Rule as that of Residence is;

It cannot be denied, that the eldest Canons of the Church were so strict and severe, that they made it unlawful for any Man to go from that Church in which he first received Orders; as well as to take another Benefice in it: and so for any Bishop to be translated from that Place he was first Consecrated to; as well as to hold another with it. But the Good of the Church being the main Foundation of all the Rules of it; when that might be better promoted by a Translation, it was by a tacit Consent looked on, as no unjust Violation of its Rules. The Question then is, Whether the Churches Benefit may not in some Cases make the Canons against Non-Residence as Dispensable, as
those

those against *Translations*? And the Resolution of it doth not depend upon the voiding the particular Obligation of the Incumbent to his Cure; but upon some more general Reason with respect to the State of the Church; as being imployed in the Service of it, which requires a Persons having (not a bare Competency for Subsistence, but) a Sufficiency to provide Necessaries for such Service: For those seem to have very little regard to the flourishing Condition of a Church, who would confine the Sufficiency of a Subsistence, meerly to the Necessaries of Life. But it seems to be reasonable, that Clergymen should have Incouragement sufficient, not only to keep them above Contempt, but in some respect agreeable to the more ample Provision of other Orders of Men. And by God's own Appointment the Tribe of Levi did

did not fall short of any of the rest, if it did not very much exceed the Proportion of others. We do not pretend to the Privileges they had, only we observe from thence, that God himself did appoint a plentiful Subsistence for those who attended upon his Service. And I do not know what there is *Levitical* or *Ceremonial* in that. I am sure the Duties of the Clergy now require a greater Freedom of Mind from the anxious Cares of the World, than the Employments of the *Priests* and *Levites* under the Law. But we need not go so far back; if the Church enjoyed all her Revenues as entirely, as when the severe Canons against *Pluralities* were made, there would not be such a Plea for them, as there is too much Cause for in some Places, from the Want of a competent Subsistence. But since that time, the
Abun-

Of the Duties and Rights

Abundance of *Appropriations* (since turned into *Lay-Fees*) hath extreamly lessened the Churches Revenues, and have left us a great Number of poor Vicarages, and Arbitrary Cures, which would hardly have afforded a Maintenance for the *Nethinims* under the Law, who were only to be *Hewers of Wood*, and *Drawers of Water*. But this doth not yet clear the Difficulty: For the Question is, Whether the Subsistence of the Clergy can lawfully be improved by a *Plurality of Livings*? Truly, I think this (if it be allowed in some Cases lawful) to be the least desirable way of any; but in some Circumstances it is much more excusable than in others. As when the Benefices are mean, when they lie near each other, when great care is taken to put in sufficient Curates with good Allowance; when Persons take all Opportunities to do their

their Duties themselves, and do not live at a distance from their Benefices in an idle and careless manner. But for Men to put in Curates merely to satisfy the Law, and to mind nothing of the Duties of their Places, is a horrible Scandal to Religion and our Church, and that, which if not amended, may justly bring down the Wrath of God upon us. For the loosest of all the Popish Casuists look upon this as a very great Sin, even those who attributed to the Pope the highest Dispensing Power in this Case.

But when the great Liberty of *Dispensing* had made the Ecclesiastical Laws in great measure useless, then it was thought fit by our Law-makers to restrain and limit it by a Statute made 21 *H. VIII.* wherein it is Enacted, "That if any Person
"or Persons having one Benefice
"with Cure of Souls, being of the
"yearly

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“ yearly Value of Eight Pounds, or
 “ above, accept, or take any other
 “ with Cure of Souls, and be in-
 “ stituted, and inducted in Possession
 “ of the same, that then, and im-
 “ mediately after such Possession had
 “ thereof, the first Benefice shall be
 “ adjudged to be void. And all
 “ Licenses and Dispensations to the
 “ contrary are declared to be void
 “ and of none effect.

This, one would have thought,
 had been an effectual Remedy a-
 gainst all such *Pluralities and Dis-*
pensations to obtain them; and this,
 no doubt, was the primary Design
 of the Law; but then follow so
 many *Proviso's* of Qualified Men to
 get Dispensations, as take off a
 great deal of the Force and Effect of
 this Law. But then it ought well
 to be consider'd; Whether such a
 License being against the chief De-
 sign of a Law, can satisfie any Man
 in

in point of Conscience, where there is not a just and sufficient Cause? For, if the Pope's Dispensation, with the supposed Plenitude of his Power, could not satisfy a Man's Conscience without an antecedent Cause, as the Casuists resolve, much less can such Proviso's do it.

It is the general Opinion of Divines and Lawyers, saith Lessius, That no Man is safe in Conscience by the Pope's Dispensation for Pluralities, unless there be a just cause for it. Less. l.2.c.34. Dub. 27.

No Man can with a safe Conscience, take a Dispensation from the Pope for more Benefices than one, meerly for his own Advantage, saith Panormitan; and from him Sylvester and Summ. Angelica. Pan.c.dudum. 2. de Elect. Sylv. Benef. 4. Sum. Angel. Ben. 35.

A Dispensation, saith Cardinal Tolet, secures a Man as to the Law; but as to Conscience there must be a good cause for it; and that is, when the Church hath more Benefit by it, than it would have without it. Tolet Summa Casim. 5. c.82.

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But the Pope's *Dispensing Power* went much farther in point of Conscience in their Opinion, than that which is settled among us by Act of Parliament. For it is expressed in the Statute of 21 *Hen. VIII.* That the Dispensation is intended to keep Men from *incurring the Danger, Penalty, and Forfeiture in the Statute comprised.* So that the most qualified Person can only say, that the Law doth not deprive him; but he can never plead that it can satisfy him in point of Conscience, unless there be some Cause for it, which is of more Moment to the Church, than a Man's sole and constant Attendance on a particular Cure is. But this Statute is more favourable to the Clergy, than the *Canon Law* was before, in two Particulars.

1. In declaring that no *simple Benefices*, or meer *Dignities*, as the *Canonists* call them, are comprehended
under

under the Name of Benefices, having Cure of Souls, viz. no Deanary, Archdeaconry, Chancellorship, Treasurership, Chanter'ship, or Prebend in any Cathedral or Collegiate Church, nor Parsonage that hath a Vicar endowed, nor any Benefice perpetually appropriate. But all these before were within the reach of the Canon Law, and a Dispensation was necessary for them: Which shews, that this Law had a particular respect to the necessary Attendance on Parochial Cures, and looked on other Dignities and Preferments in the Church, as a sufficient Encouragement to *extraordinary Merit*.

2. That no notice is taken of Livings under the Valuation of 8*l*. which, I suppose, is that of 20 *E*. 1. for that of *H*. 8. was not till five years after that Statute. But after that Valuation it was to be judged according to it, and not according to the real Value, as the Judges declared 12 *Car*. I.

Cr. Car. f. 456. in the Case of *Drake and Hill*. Now here was a regard had to the Poor-ness of Benefices, so far, that the Statute doth not deprive the Incumbent upon taking a second Living, if the former be under 8 *l.* The Question that arises from hence is, Whether such Persons are allowed to enjoy such Pluralities by Law; or only left to the Ecclesiastical Law, as it was before? It is certain, that such are not liable to the Penalty of this Law; but before any Person might be deprived by the Ecclesiastical Law for taking a second Benefice without Dispensation, of what Value soever the former were; now here comes a Statute, which enacts, That all who take a second Benefice, having one of 8 *l.* without Qualification, shall lose his legal Title to the first; but what if it be under? Shall he lose it or not? Not by this Law. But suppose the Ecclesiastical Law before

*C. 4. 75. Hol-
land's Case.*

before makes him liable to Deprivation; doth the Statute alter the Law without any Words to that purpose? The Bishop had a Power before to deprive, where is it taken away? The Patron had a Right to present upon such Deprivation; how comes he to lose it? And I take it for granted, That no antecedent Rights are taken away by Implications; but there must be exprefs Clauses to that purpose. So that I conclude, the ancient Ecclesiastical Law to be still in Force, where it is not taken away by Statute.

And thus, my Brethren, I have laid before you the *Authority* and the *Rules* we are to act by; I have endeavoured to recommend to you, the most useful Parts of your Duty, and I hope you will not give me occasion to shew what Power we have by the Ecclesiastical Law of this

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Realm to proceed against Offenders. Nothing will be more uneasy to me, than to be forced to make use of any Severity against you. And my Hearts desire is, That we may all sincerely and faithfully discharge the Duties of our several Places, that the blessing of God may be upon us all; so that we may *save our selves, and those committed to our Charge.*

OF

OF THE
N A T U R E
OF THE
T R U S T

Committed to the

Parochial Clergy,

At a Visitation at *Worcester,*
October 21st 1696.

My Brethren,

I Have formerly, on the like Occasion, discoursed to you of the General Duties of your Function, and the Obligation you are under to perform them ; and there-

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fore

fore I shall now confine my Discourse to these Two Things :

I. To consider the particular Nature of the *Trust* committed to you.

II. The Obligation you are under to your *Parochial Cures*.

I. The first is necessary to be spoken to; for while Persons have only so confused and cloudy Apprehensions concerning it, they can neither be satisfied in the Nature of their Duties, nor in their Performance of them. And there is Danger as well in setting them so high as to make them Impracticable, as in sinking them so low as to make, not only themselves, but their Profession Contemptible. For the World (let us say what we will) will always esteem Men, not merely for a Name and Profession, but for the
Work

Work and Service which they do. There is, no doubt, a Reverence and Respect due to a Sacred Function on its own Account; but the highest Profession can never maintain its Character among the rest of Mankind, unless they who are of it, do promote the General Good, by acting suitably to it. And the greater the Character is, which any bear, the higher will the Expectations of others be concerning them; and if they fail in the greatest and most useful Duties of their Function, it will be impossible to keep up the Regard which ought to be shew'd unto it. We may complain as long as we please of the Unreasonableness of the Contempt of the Clergy in our Days, (which is too general, and too far spread) but the most effectual Means to prevent or remove it, is for the Clergy to apply themselves to the most necessary Duties,
with

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with Respect to the Charge and Trust committed to them.

But here arises a considerable Difficulty, which deserves to be cleared; viz. concerning the just *Measures* of that Diligence which is required. For, there are some who will never be satisfied that the Clergy do enough, let them do what they can; and it is to no purpose to think to satisfy them who are resolved not to be satisfied: But on the other side, some care not how little they do, and the less, the better they are pleased with them; and others again, have raised their Duties so high, that scarce any Man can satisfy himself that he hath done his Duty.

It is a matter therefore of the highest Consequence to us, to understand, What Rule and Measure is to be observed, so as we may neither wilfully neglect our Duty, nor despair of doing it.

Here

Here we are to consider Two Things ;

1. How far the Scripture hath determined it.

2. What Influence the Constitution of our Church is to have upon us concerning it.

1. The Scripture doth speak something relating to it, both in the Old and New Testament.

In the Old Testament we have the Duties enjoyned to the Levitical Priesthood, and the extraordinary Commissions given to the Prophets.

As to the *Levitical Priesthood*, we can only draw some general Instructions, which may be of use, altho' that Priesthood hath been long since at an end ; Christ being our High-Priest after another Order, *viz.* of *Melchisedeck* ; and our Duty now is to observe his Laws, and to offer that Reasonable Service which he requires.

But

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But even from the *Levitical Priesthood*, we may observe these things.

1. That although the main of their Duty of Attendance respected the Temple and Sacrifices; yet at other times they were bound to instruct the People in the Law. For so Moses leaves it as a special Charge
 Deut. 33. 10. to the Tribe of Levi, to teach Jacob
 Levit. 10. 11. his Judgments, and Israel his Law.

And to encourage them to do it, they had a liberal Maintenance, far above the Proportion of the other Tribes. For, by Computation it will be found, that they were not much above the Sixtieth part of the People; for when the other Tribes were numbred from Twenty years
 Numb. 1. 3, 46. old, they made six hundred thousand, and three thousand and five hundred and fifty. But the Children of Levi were reckoned by themselves from a
 3. 15, 39. Month old; and they made but Two and twenty thousand; so that if the
 Males

Males of the other Tribes had been reckoned, as they were, it is agreed by Learned Men, who had no Fondness for the Clergy, that they did not make above a fiftieth or sixtieth part; and yet they had near a fifth of the Profits, besides accidental Perquisites, as to Sacrifices, and Ransoms of the First-born. *Thus, say they, God was pleased to enrich that Tribe which was devoted to his Service.* But it was not certainly, that they should spend their time in Idleness and Luxury, but that they might with the greater freedom apply themselves to the Study of the Law, that they might instruct the People. For the Cities of the Levites were as so many Colleges dispersed up and down in the several Tribes, to which the People might upon occasion, more easily resort.

Selden's Review, P. 456.

2. That if the People erred thro' Ignorance of the Law, God himself laid the Blame on those who were bound

Hosea 4. 6.

bound to instruct them. *My People, saith God by the Prophet, are destroyed for lack of Knowledge.* If People are resolved to be ignorant, who can help it? Had they not the Law to inform them? But it is observable, that the Peoples Errors are laid to the Charge of the Priests, and the Punishment is denounced against them. *Because thou hast rejected Knowledge, I will also reject thee, that thou shalt be no Priest unto me.* It seems the Priests were grown careless and negligent, as to their own Improvements; they did not know to what purpose they should take so much pains in studying the Law, and the difficult Points of it; they were for a freedom of Conversation, and hoped to keep up their Interest among the People that Way. Therefore *Isaiah* calls them *Shepherds that cannot understand*; but were very intent upon their Profits, *they all look*

Isa. 56. 11.

to

of the Parochial Clergy.

III

to their own Way, every one for his Gain from his Quarter. But this was not all, for the Prophet charges them with a Voluptuous, Careless, Dissolute Life. Come ye, say they, I will fetch Wine, and we will fill our selves with strong Drink, and to morrow shall be as this day, and much more abundant. Was not this a very agreeable life for those who were to instruct the People in the Duties of Sobriety and Temperance? It was Death for the Priests by the Law to drink Wine or strong Drink, when they went into the Tabernacle of the Congregation; and the Reason given is, That ye may put a difference between holy and unholy, and between unclean and clean; and that ye may teach the Children of Israel all the Statutes, which the Lord hath spoken to thee by the Hand of Moses. Which implies, That those who are given to drinking Wine or strong Drink, are very unfit to instruct others

12.

Levit. 10.8,9.

10.

11.

thers in the Law of God. And God looked on them as such a Dishonour to his Worship, that he threatens immediate Death to them that approached to his Altar, when they had drank Wine ; and the *Jews* say, that was the Reason why *Nadab* and *Abihu* were destroyed. And then God said,

Levit. 10. 3. *I will be sanctified in them that come nigh me.* All Nations have abhorred sottish and drunken Priests, as most unfit to approach to God when they were not themselves ; or to offer Sacrifices for others, when they made Beasts of themselves. But this was not all ; for God required from them who were to teach others the Law, that they should be always in a Capacity of understanding and practising it themselves.

But if we proceed to the *Prophets*, nothing can be more dreadful, than what God saith to *Ezekiel*, That if he did not warn the People as he
com-

commanded them, *their Blood will I* Ezek. 3. 18,
20.
require at thy hand. Is this Charge now 33. 7.

lying upon every one of you, as to every Person under your Care? Who would not rather run into a Wilderness, or hide himself in a Cave, than take such a Charge upon him?

But we must distinguish what was peculiar to the Prophet's immediate Commission to go to any particular Person in God's Name, from a General Charge to inform Persons in their Duties, and to tell them the Danger of continuing in their Sins. If any fail for want of Information, when you are bound to give it, the Neglect must fall heavy, and therefore you are bound to take all just Opportunities in publick and private to inform those under your Care of such Sins as you know them to be guilty of; not with a Design to upbraid, but to reform them.

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In the New Testament the Charge is General to feed the Flock of God ;
 1 Pet. 5.2, 3. and to do it willingly, not for filthy Lucre, but of a ready mind ; and to be Examples to the Flock. But St. Peter, who gives this Advice, doth not determine who belong to the Flock ; nor within what Bounds it is to be limited ; and there were many Flocks in the Jewish Dispersion, and many Elders scattered up and down among them in Pontus, Asia, Galatia, Cappadocia, and Bithynia ; so that here we have only general and excellent Advice for such who had Care of the several Flocks, to carry themselves towards them with great Humility and Tenderneſs, with Charity and Goodneſs, as thoſe that made it their buſineſs to do good among them, and conduct them in the Way to Heaven.

St. Paul, in his Charge to thoſe whom he ſent for to Miletus, tells them,
 That

Acts 20, 28.

1 Thess. 5.12.

Heb. 13. 17c

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take so great and solemn an Office upon them; but where are the Bounds and Limits set, as to the People, and Nature of the Duties required from them? Must every Man be left to his own Conscience and Judgment, what, and how far he is to go? Or can we suppose all Men equally careful of doing their Duties, if no particular Obligation be laid upon them? Some of the Eloquent Fathers of the Church, as *St. Chrysostom*, *St. Jerom*, *St. Gregory Nazianzen*, and others, have allowed themselves so much in the Flights of Fancy, and Figures of speaking about the Height and Dignity of the Sacred Function, as if they had a mind to discourage all Men of modest and humble Dispositions from undertaking it. I do not wonder that they ran into Solitudes, and withdrew from the World upon it; but I do wonder how they came from thence and undertook the

the same Charge afterwards, without giving an Answer to their own Arguments. For the World remained just as it was when they left it. Mankind were still as impatient of being governed, or told of their Faults, as fickle and humourfom, as prone to Evil, and untractable to Good, as it was before. And could they hope it would ever mend by their running away from it? Or, was their Duty become more easie by declining it; I think it was very well for the Church of God, that, notwithstanding their own many Arguments, they took the Sacred Office upon them at last, and did God and the Church good Service in it. But if Men were to judge by their Writings upon this Argument, one would think none but those who had a mind to be damned, would undertake it. And their great Strains of Wit and Eloquence, if they had

any Force, would keep the best Men out of the Church, who were most likely to do God Service in it ; and we need no other Instances than these very Persons themselves. And if all good, and humble, and conscientious Men should for the sake of the Hardness of the Work, decline the Church's Service, and take any other lawful Employment, what would become of the Church of God? For none that had, or intended to keep a good Conscience, could undertake the Cure of Souls ; and so they must be left to such as had no Regard to their own ; but were either ignorant, stupid and senseless Creatures, or such as regarded not their own Salvation, who durst undertake such a Task, as would not only add to their own Guilt, but bring the heavy Load of other Mens Faults upon them too.

What

What is now to be done in this Case ? Hath God really imposed such a Task upon all those who enter into this Sacred Function, that it is morally impossible for an honest Man to discharge it with a good Conscience ? How then can any such undertake it ? But if it may be done, what are those Bounds and Rules we are to observe, so as a good Man may satisfy himself in a competent Measure, that he hath done his Duty ?

II. And this is that which I shall now endeavour to clear. For every one who is in Orders, hath a double Capacity : One with Respect to the Church of God in General ; another to that particular Flock which is allotted to him, by the Constitution of this Church, and the Law of the Land. For although the Nature of our Duty in general be determined by the Word of God, as I have al-

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ready shewed, yet the particular Obligation of every one to his own Flock, is according to that Power and Authority, which by the Rules and Orders of this Church is committed to him, and is fully expressed in the Office of Ordination. By which it plainly appears, that the Care of Souls committed to Persons among us, is not an absolute, indefinite, and unaccountable Thing; but is limited, as to Place, Persons, and Duties, which are incumbent upon them. They are to teach the People committed to their Charge; By whom? By the Bishop when he gives Institution.

They are to give private as well as publick Monitions and Exhortations, as well to the sick, as to the whole: What, to all? No, but to those within their Cure.

They are to banish erroneous Doctrines, and to promote Peace and Love, especially

especially among them committed to their Charge.

And last of all, they are to Obey those who have the Charge and Government over them.

These things are so express and plain in the very Constitution of this Church, and owned so solemnly by every one that enters into Orders, that there can be no Dispute concerning them.

And from thence we observe several things that tend to the Resolution of the main Point, as to the Satisfaction of doing your Duties, as Incumbents on your several Places.

I. That it is a Cure of Souls limited as to Persons and Place, *i. e.* within such a Precinct as is called a Parish.

II. That it is limited as to Power, with Respect to Discipline.

Therefore

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Therefore I shall endeavour to clear these Two Things :

I. What the just Bounds and Limits of Parochial Cures are.

II. What is the Measure of that Diligence which is required within those Bounds.

As to the former, we are to begin with the Limitation as to *Place*.

I. That it is a Cure of Souls limited within certain Bounds which are called *Parishes*, which are now certainly known by long Usage and Custom, and ought still to be preserved with great Care; for otherwise Confusion and Disputes will arise between several Ministers, and several Parishes with one another. For since the Duties and the Profits are both limited, it is necessary that those Bounds should be carefully preserved, as they generally are by Annual Perambulations.

Ad probandam Ecclesiam Parochialem, primo est necesse quod habeat locum certis finibus constitutum, in quo degat populus illi Ecclesie deputatus. Rebuff. ad Concord. de Collat. Sect. Stat. n. 2.

But

But there are some who will understand nothing of this bounding of Ministerial Duties by distinct Parishes, who think they are at liberty to exercise their Gifts where-ever they are called; and that it were better that these parochial Inclosures were thrown open, and all left at liberty to chuse such whom they liked best, and under whom they can improve most.

These things seem to look plausibly at the first Appearance, and to come nearest to the first gathering of Churches, before any such thing as Parishes were known.

But to me this Arguing looks like Persons going about now to overthrow all Dominion and Property in Lands and Estates, because it seems not so agreeable with the first natural Freedom of Mankind; who according to the Original Right of Nature, might pick and chuse what served most

most to their own Convenience. But although this were the first State of things, yet the great Inconveniences which followed it, upon the Increase of Mankind, made Division and Property necessary; and altho' there be no expresse Command of God for it, yet being so necessary for the Good of Mankind, it was not only continued every where, but those Persons were thought fit to be punished by severe Laws, who invaded the Rights and Properties of others, either by open Violence and Rapine, or by secret Stealth and Purloining.

I grant, that at first there were no such Parochial Divisions of Cures here in *England*, as there are now. For the Bishops and their Clergy lived in Common; and before that the Number of Christians was much increased, the Bishops sent out their Clergy to preach to the People, as they

they saw Occasion. But after the Inhabitants had generally embraced Christianity, this Itinerant and Occasional going from Place to Place, was found very inconvenient, because of the constant Offices that were to be administred; and the Peoples knowing to whom they should resort for Spiritual Offices and Directions. Hereupon the Bounds of Parochial Cures were found necessary to be settled here by degrees, by those Bishops who were the great Instruments of converting the Nation from the Saxon Idolatry. But a Work of this Nature could not be done all at once, as by a kind of *Agrarian Law*, but several Steps were taken in order to it.

At first, as appears by Bede, they made use of any old *British Churches* that were left standing; so *Augustin* at first made use of *St. Martin's* near *Canterbury*, and after repaired *Christ-Church*,
Bed. l. i. c. 28.
c. 33.

- Church, which were both British Churches. But Ethelbert gave all encouragement both to repair Old Churches and to build New. However, the Work went on slowly; Augustin consecrated but two Bishops, which were settled at London and Rochester, where Ethelbert built and endowed two Churches for the Bishops and their Clergy to live together. In the Western Parts Bicinus built several Churches about Dorchester, where his See was fixed. Wilfred converted the South-Saxons, and settled Presbyters in the Isle of Wight, but they were but two. In the Kingdom of Mercia there were five Diocesses made in Theodore's time; and Putta, Bishop of Rochester, being driven from his See, he obtained from Saxulphus, a Mercian Bishop, a Church with a small Glebe, and there he ended his Days. In the Northern Parts we read of two Churches built by two Noblemen,
- (Pueh
- L. 2. c. 3.
- L. 3. c. 7.
- L. 4. c. 13, 16.
- L. 4. c. 12.
- L. 5. c. 4. 5.

(*Puch* and *Addi*) upon their own
Manors. And the same might be
done elsewhere; but *Bede* would ne-
ver have mentioned these, if the
thing had been common. But in
his Epistle to *Egbert*, Archbishop of
York, a little before his Death he in-
timates the great Want of Presbyters
and Parochial Settlements, and there-
fore earnestly perswades him to pro-
cure more. And if *Egbert's* Canons
be genuine (of which there are seve-
ral Ancient MSS.) the Duties of
Presbyters in their several Churches
are set down: However, the Work
went not on so fast, but in his Suc-
cessor *Eanbaldus* his time, the Bishops
were required to find out convenient
places to build Churches in; and
the same passed in the Southern Parts
by general Consent. In the Council
of *Cloueshoo*, we read of Presbyters
placed up and down by the Bishops in
the Manors of the Laity, and in several
Parts

*Bed. Epist. ad
Egbert. p. 64.*

*Egbert. Can.
1, 2, 3, 4.*

*Concil. Anglie.
1. 293.*

1. p. 248.

Can. 9. Parts distinct from (the Episcopals See) and there they are exhorted to be diligent in their Duties. In the times of Edgar and Canutus, we read of the Mother Churches, which had the Ori-

Concil. Anglic.
I. 444.

P. 544, 545.

P. 540.

ginal Settlement of Tithes, (after they were given to the Church by several Laws) and of the Churches built upon their own Lands by the Lords of Manors; to which they could only apply a third Part of the Tithes. But in the Laws of Canutus, we find a fourfold Distinction of Churches. 1. The Head Church, of the Bishop's See. 2. Churches of a second Rank, which had Right of Sepulture, and Baptism, and Tithes. 3. Churches that had Right of Sepulture, but not frequented. 4. Field Churches or Oratories, which had no Right of Burial. The second sort seem to be the Original Parochial Churches which had the Endowment of Tithes, and were so large, that

that several other Churches were taken out of them by the Lords of Manors; and so the Parishes came to be multiplied so much, that in the Laws of *Edward the Confessor*, c. 9. it is said, That there were then Three or Four Churches, where there had been but One before. In this Diocess I find by an Epistle of *Wulston*, Bishop of *Worcester*, to *Anselm*, that before the Conquest there were Churches in Vills, or upon particular Manors that were consecrated. And if *William the Conqueror* demolished Six and thirty Parish Churches in the Compass of the *New Forest*, as is commonly said, there must be a very great Number before the Conquest; although so few are said to appear in *Doomsday Book*; (yet there are many parochial Churches of this Diocess in it, above twenty in two Deanaries) but the *Normans* almost ruined the parochial Clergy, by

Anselm. Epist.
l. 4. Ep. 3.

K

seizing

seizing the Tithes, and making Appropriations of them. But in the Saxon times the Number still encreased, as Lords of Manors and others were willing to erect new Churches, and to have a settled Parochial Minister among them, who was to take Care of the Souls of the people within such a Precinct, as hath obtained the Name of a Parish. But Parishes now are of a very different Extent and Value; but the Obligation which the Law puts upon them, is the same; only where the Maintenance is greater they may have the more Assistants. And from hence came the Difference among the Parochial Clergy; for, those whose Parishes were better endowed, could maintain inferior Clerks under them, who might be useful to them in the publick Service, and assist them in the Administration of Sacraments. And this was the true Original of those

those we now call *Parish-Clerks*; but were at first intended as *Clerks-Assistant* to him that had the *Cure*; and therefore he had the *Nomination* of them, as appears by the *Ecclesiastical Law*, both here and abroad.

And *Lyndwood* saith, *Every Vicar was to have enough to serve him, and One Clerk or more*; and by the *Canon-Law*, no *Church* could be founded, where there was not a *Maintenance* for

Joh. de Azbon. in Const. Othob. p. 59.

Assisting-Clerks. In the *Synod of Worcester*, under *Walter Cantelupe*, in *Henry the Third's* time, they are called

Extr. de Jure Patron. c. 30.

Capellani Parochiales, and the *Rectors* of *Parishes* were required to have such with them. And the *Canon*

Lyndw. f. 34. 167.

Law doth allow a *Rector* to give a *Title* to another to receive *Orders* as an *Assistant* to him; and this without any prejudice to the *Patron's* *Right*; because but *One* can have a *Legal Title* to the *Cure*. But *Lynd-*

De Vit. & Honest. c. 3. Gloss. C. 1. q. 2. c. 1. Concil. Anglic. 11. 253.

wood observes very well, *That those*

Lyndw. f. 53. 2. 167. 72. 2.

who gives Titles to others, as their Assistants or Curates, are bound to maintain them if they want. These are called *Vicarii Parochiales*, & *Stipendiarii*; but *Conductitii Presbyteri*, who are forbidden, were those who took Livings to farm, without a Title. But after Appropriations came in, then there were another sort of Vicars called *Perpetui*, and were endowed with a certain Portion of the Temporalities, and were admitted *ad Curam Animarum*: But such could not *Personam Ecclesie sustinere* in an Action at Law about the Rights of the Church, but as to their own Right they might. But still there is another sort of *Vicars*, who are *Perpetual*, but not *Endowed* any otherwise than the Bishop did allow a *congrua Portio*; and this was in Appropriations where the Bishop consented only upon those Terms, as they generally were so made, till the Neglect made the Statutes

Extr. Ne
præter vices,
8cc. c. 3.

Lyndw. de
Consert. E.
Stat. c. Rest.
Athol. f. 13.

Statutes necessary, 15 R. 2. 6. and 4 H. 4. 12. The Bishops were to make, or enlarge the Allowance, say the Canonists, after Presentation, and before Institution, and were to see that it were a sufficient Subsistence.

*Ext. de Prab.
c. de Monachis.*

But there were some Cures which had Chapels of Ease belonging to them; and they who officiated in them, were called *Capellani*, and had their Subsistence out of the Oblations and Obventions, and were often *Perpetual* and *Presentative*. And where the Incumbents had several Chapels of Ease, and only Assistants to supply them, the Canon Law doth not call them *Rectores*, but *Plebani*; who had a sort of peculiar Jurisdiction in lesser Matters; but still they were under the Bishops Authority in Visitation and other Ecclesiastical Censures, because the Care of the whole Diocese belonged to him *jure Communi*; and so it was taken for granted

*Lyndw. de Officio Vicarii,
c. quoniam*

*Thorn. c. 21
Sect. 8.*

*Extr. de Officio
Ordin.
Azor. p. 2. l. 3.
c. 19.
Barbosa de
Officio Parochial. c. 1. n. 9.*

in all Parts of the Christian World :
 And especially in this Kingdom,
 where *Parochial Episcopacy* was never
 heard of till of late years. For, no-
 thing can be plainer in our History,
 than what is affirmed in two of our
 Laws, Stat. of *Carlisle*, 25 E. 1. and
 the Stat. of *Provisors*, 25 E. 3. That
the Church of England was founded in
Prelacy, or Diocesan Episcopacy. For
 our first Bishops were so far from be-
 ing confined to one Church or Town,
 that at first in the Saxon-Division of
 Kingdoms, every Bishop had his
 Diocess equal with the Extent of the
 Kingdom, except in *Kent*, where one
 Suffragan to the Archbishop at *Ro-*
chester was confirmed.

The first Conversion of the *Eng-*
lish Nation to Christianity from Pa-
 ganism, was by the Diocesan Bi-
 shops, who were sent hither from
 several Parts, and the Presbyters im-
 ployed by them ; and as the Number
 of

of Christians increased, the Number of Bishops did so too; so that in the Parts of *Mercia* one Diocess was divided into five, that they might the better look after the Government of them; and every Bishop, as appears by the *Saxon-Councils*, was bound to see parochial Churches built, and the Clergy to be settled in them to attend upon the Duties of their Function among the people committed to their Charge.

That which I have aimed at in this Discourse, was to shew, That the Original Constitution of this Church, was *Episcopal*; but yet that the Bishops did still design to fix a *Parochial Clergy* under them, as Churches could be built and endowed.

It remains now to shew, That this Constitution of a *Parochial Clergy*, is more reasonable, than that of an unfixed, and unsettled Clergy by Law;

which will easily appear, if we consider,

1. The greater Advantage as to Unity, and real Edification among the People. For this makes them to be as one Body within certain Bounds; And the People know whither to resort for publick Worship and Sacraments; and the Inconveniencies, as to the difference of Mens Abilities, is not so great, as the Inconveniency of a broken, divided people, as to Religion; which always creates Suspicions and Jealousies, and generally Contempt and Hatred of each other. And I think every wise and good Christian will consider, that which tends to Peace and Unity, is really more Edifying than a far better Talent of Elocution, or the most moving Way of exciting the Fancies and Passions of Hearers. For, *S. Paul* tells us, *Charity is beyond miraculous Gifts.* It is easie to observe, that the wisest

wisest Methods are seldom the most popular; because the generality of Mankind do not judge by Reason, but by Fancy, and Humour, and Prejudices of one kind or other. From hence the Heats of Enthusiasm, and odd Gestures, and vehement Expressions, with no deep or coherent Sense, take much more with ordinary and injudicious people, than the greatest Strength and clearness of Reason, or the soundest Doctrine, and the most pious Exhortation, if they be not set off in such a Way as strikes their Imaginations; and raises their Passions. And this is that which such do commonly call the most Edifying Way of Preaching, which is like the coming up of the Tide with Noise and Violence, but leaves little Effect; whereas the other is like a constant Stream which goes on in a steady and even Course, and makes the Earth more fruitful. The one is like

like a Storm of Thunder and Lightning, which startles, and confounds, and amuses more; but the other is like a gentle Rain which softens and mellows the Ground, and makes it more apt to produce kindly and lasting Fruit. We are to judge of true Edification, not by the sudden Heat and Motion of Passions, but by producing the genuine Effects of true Religion; which are fixing our Minds on the greatest and truest Good, and calming and governing our disorderly Passions, and leading *a godly, righteous and sober Life*. But we too often find violent and boisterous Passions, an ungovernable Temper, Envy, Strife and Uncharitableness, growing up with greater Pretences to Zeal, and better Ways of Edification.

I never expect to see the World so wise, as to have Persons and Things universally esteemed according

ing to their Real Worth. For there will be a Tincture in most persons, from Temper, and Inclination, and the Principles of Education; but generally speaking Matters of Order and Decency, and Things which tend to a publick Good, affect those most, who have the best Judgment and Temper; and irregular Heats, and disorderly Methods of praying and preaching, those whose Religion makes more Impression upon their Fancies, than their Judgments, and is seen more in the inflaming their Passions, than in keeping them in their due Order.

2. There is a greater Advantage as to Discipline: For, if among the Teachers they are under no Bounds nor Subjection to a Superiour Authority, it is very easie to avoid any kind of Censure for the most corrupt Doctrines or Practices. We cannot boast much of the strict
Exer-

Exercise of Discipline among us ; and one great Reason is, That many have more mind to complain of the Want of it, than to do their Endeavour to amend it. We hear of many Complaints of the Clergy in general, and sometimes by those who have more mind to have them thought guilty, than to prove them so, for fear they should acquit themselves, or at least the Church should not bear the blame of their Miscarriages. But we cannot proceed arbitrarily, we must allow them timely notice, and summon them to appear, and a just Liberty of Defence ; but if upon Proof, and sufficient Evidence we have not proceeded against them with the just Severity of the Law, then we ought to bear the Blame, but not otherwise. But whatsoever personal Neglects or Faults there have been, or may be, my Business is to shew, that our Way

is much better fitted for the just Exercise of Discipline, than that of Independant Congregations, altho' the Managers of them pick and cull out the best they can for their Purpose; and one would think, when they had made choice of Members to their mind, and bound them together by an Explicit Covenant, they should be very easie, and tractable, and submissive to their own Discipline. But they have found the contrary by their sad Experience; they grow too heady and wilful to bear any such thing as strict Discipline; for when they had the Courage to exercise it, their Congregations were soon broken to pieces, and the several divided Parts were for setting up new Heads one against another, till at last they found it was much easier to be Teaching than to be Ruling Elders. And so they have let the Reins of Discipline fall to
keep

keep their Congregations together. But suppose the Teachers should fall out among themselves ; as, to give a fresh and late remarkable Instance : Suppose some set up *Antinomianism*, and preach such Doctrines to the People or Flocks before you, which others think of dangerous Consequence, What is to be done in such a Case ? They may send some Brethren to enquire whether the Matters of fact be true. Suppose they find them true, What then ? What is to be done next ? It may be, some would have them come up to their Brethren and answer to the Accusations brought against them. But suppose they will not ; and others of the Brethren say, they ought not ; and so fall into Heats and Disputes among themselves about it, and make new Parties and Divisions : Is not this an admirable Way of preserving Peace, and Order, and Discipline

pline in a Church? And I am as certain, this is not the Way of Christ's appointing, as I am, that *God is the God of Order, and not of Confusion*; and that when Christ left the Legacy of Peace to his Church, he left a Power in some to see his Will performed. But these things can never be objected against us; for all are Members of the same Body, and are governed by certain and known Rules; and if any be guilty of open Violation of it, the Way is open to accuse and prosecute them; and if they be found guilty, the Censures of the Church will render them incapable of doing it in such a Station; or at least, to bring them to Confession of their Fault, and Promise of future Amendment. And now I leave any one to judge, whether the *Parochial Clergy* are not under greater and better Discipline, than the Teachers of the separate Congregations.

II. But

II. But the great Complaint of such Men is, That we want *Parochial and Congregational Discipline*, so that Faults should be examined and punished where they have been committed ; but instead of that, all Matters are drawn into the Ecclesiastical Court, and there Causes are managed so, as looks rather like a Design to punish Men in their Purses, than for their Faults; and the Delays are so great, that the Court it self seems to be designed for Penance, and grows very uneasy, even to those who are the Members of our Church. And some think that the proceeding against Men upon Articles of Enquiry, not so agreeable to the Rights and Liberties of Mankind. In answer to this, I shall consider, (1.) The Proceedings upon Enquiry at Visitations. (2.) The Method of Proceeding in the Ecclesiastical Courts. (3.) The

(3.) The Inconveniencies of parochial Discipline.

1. As to Enquiries at *Visitations*.

They were grounded upon one of the main Pillars of our Law, viz. an ancient, immemorial Custom founded upon good Reason: In the first Canons that ever were made in this Church under *Theodore*, Archbishop of *Canterbury*; the second is, *That every Bishop is to look after the Government of his own Diocess, and not to invade anothers.* And that in so doing they went about their Diocesses in order to an Enquiry and Correction of Miscarriages, is evident from the Council under *Cuthbert*, Archbishop of *Canterbury*, *Can. 3. 25.* the first Council at *Calechyth*, *Can. 3.* the Constitutions of *Odo*, Archbishop of *Canterbury*, *Can. 3.* and the Canon of *Edgar*, *Can. 3.* But in these *Saxon times*, the *Visitations* were annual, which were found inconvenient;

*Concil. Angl.
I. p. 183.*

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and

and therefore in the *Norman* times, the Archdeacons were taken into a part of the Jurisdiction under the Bishop, and visited those years the Bishop did not. But we meet with no *Archdeacons* with any kind of Jurisdiction in the *Saxon* times; we read indeed sometimes of the Name of *Archdeacons*, but they had nothing to do in the Diocess, but only attended the Bishop at Ordinations, and other publick Services in the Cathedral. *Lanfranc* was the first who made an *Archdeacon* with Jurisdiction in his See. And *Thomas* first Archbishop of *York*, after the Conquest, was the first who divided his Diocess into *Archdeaconries*; and so did *Remigius*, Bishop of *Lincoln*, his large Diocess into Seven *Archdeaconries*, saith *H. of Huntingdon*: And so it was with the rest; of which there were two Occasions, 1. The laying aside the *Corepiscopi* in the Western Parts,

Angl. Sacr.
1. 150.

Stub. Vit. Arch.

H. Hunting-
in Angl. Sacr.

Parts, as assuming too much to themselves. 2. The publick Services which the Bishops were more strictly tied to, as the King's Barons in the *Norman* times: Which was the Reason not only of taking in Archdeacons, but likewise of Arch-presbyters or Rural-Deans, who had some Inspection into the several Deanaries, and assisted the Bishop in such things, as they were appointed to do; and then came in the other Ecclesiastical Officers, as *Vicars General*, *Chancellors*, *Commissaries*, &c. for we read not of them here at all in the *Saxon times*; but about the time of *Hen. II.* the Bishops took them for their Assistance in Dispatch of Causes, when the King required their strict Attendance on the publick Affairs in the Supreme Court of Parliament.

2. As to the Method of Proceeding in the Ecclesiastical Courts, it is

no other than hath been continued here without Interruption, till of late years, ever since the Conquest. For the Consistory-Court, and the Rules of Proceeding there, were established by a Law in the time of *William the First*. As far as I can find by *King Edward's Laws*, c. 4. the Bishops did then proceed by the Ecclesiastical Laws, although they then sat in the County-Court; but this caused so much Confusion, that *William*, by a general Consent, and a Charter directed to all the People of *England*, doth separate the Ecclesiastical from the Temporal Courts; which was enrolled as good Law, 2 R. 2. upon occasion of a Suit of the Dean and Chapter of *Lincoln*; and therefore the Charter of *Remigius*, Bishop of *Lincoln*, is more mentioned than others, but the same was to all the Bishops and Counties of *England*, as appears by other Copies of it. Thus the
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Concil. Angl.
11. 14.

Seld. 14. 1.
4 *Inst.* 259.

Consistory-Court was first establiſhed, as a diſtinct Court from the County-Court, which it was not in the *Saxon times*, for then the Biſhop ſate with the Civil Magiſtrate in the ſame Court; and Eccleſiaſtical Cauſes were firſt heard and decided there. *Tit. H. 1. c. 7.* It ſeems the People were very unwilling to go to a new Place; and therefore the Law is inforced with ſevere Penalties for Contempt. And thoſe who object againſt the Reaſonableneſs of the Method of Proceeding in thoſe Courts, muſt reflect upon ſome of the wiſeſt Nations in the World, who have gone upon the ſame Grounds, in all that have received the Civil Law, and upon ſome of the greateſt Courts at this time in the Kingdom, as the *Chancery* and *Admiralty*, which go by the ſame Fundamental Rules. As to any Objections which ariſe from the perſonal Faults of thoſe who are employed in

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them,

them, that reaches, I am afraid, to all Courts ; and it ought to be the Work and Business of those who look after them, to do what in them lies, to reform them, that others Faults may not be laid at their Doors.

3. But for those who would have a *Parochial* or *Congregational Discipline* set up, as much better, and more effectual, I shall desire them to consider, that since Matters of Discipline are such, as that in them the Reputation and Interest of Persons is very much concerned, they ought not to be left to Arbitrary Proceedings of any Persons, but they ought to be managed by the certain and common Rules of Justice ; since every Man hath a Right to defend himself, when he is accused. And unless there be known and established Methods of Proceeding agreeable to natural Justice, and the Laws of the Land, nothing

nothing would be more grievous and intolerable than the common Exercise of a Parochial Discipline. For,

1. It cannot be presumed, that there will be competent Judges. For every one who hath a Faculty of Preaching, hath not a Faculty of Judging in such Cases. And where Discretion and a Judgment of Circumstances is wanting, an honest Mind will not secure Men from doing Injury, and exposing their Judicature to Contempt.

2. They have no fixed and established Rules of proceeding, as there are in the Ecclesiastical Courts, which have been continued down from time to time, and allowed by the Laws of the Land. And what miserable Disorder must follow an Arbitrary Method, when Humour, and Will, and Passion may over-rule Justice, and Equity, and Conscience?

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3. They

3. They are not under the Check of the Law, as the Ecclesiastical Courts are. For, if they exceed their Bounds, either as to the Nature of the Cause, or the Manner of proceeding, they are liable to Prohibitions from the King's Courts of Justice; but the Law can take no notice of *Parochial* or *Congregational* Judicatures, and so Men may suffer without Remedy.

4. They have no way to judge of Legal Evidence, which is very material when a person is accused. It is one of the nicest Points in all criminal Proceedings to determine what is good and sufficient Evidence. For several things are to be weighed, before either Witnesses or Testimonies can be allowed. As to Witnesses, it is required that they be persons of Reputation, and free from Infamy of Law and Fact; that they be disinterested, and so not liable to the just Suspicion

Suspicion of Partiality ; that they be Men of *Discretion and sane Memory* ; and all reasonable Exceptions are to be allowed against them. As to Testimonies ; they must be by our Law upon Oath ; and what Authority have such Persons to give an Oath, and why shall a Man be liable to suffer by a Testimony, without one, when the Law requires it ? They must be deliberate, and not given in Passion, consistent as to Time, Place, and other Circumstances : They must be certain and positive, and not upon Hear-say, or the Believing of other persons : They must be free from any just Suspicion of Contrivance and Conspiracy, or any sort of Corruption or Partiality. And now is every parochial Minister, or select Congregation fit to judge of these Matters, whereon the Reputation, and consequently the Interest of every person may be so deeply concerned ?

5. They

5. They have no way to prevent a precipitate and hasty Sentence. Suppose a Man be accused by one of Interest and Passion, who possesses others with the same Opinion beforehand, and the Judges are all prejudiced before the Matter comes to be heard ; and in popular Assemblies some few men sway the rest, what a Case is a person accused unjustly in? He hath no Liberty for others that are not of the Congregation, altho' more disinterested, either to come in to judge, or to plead for him: He can have no Advocate to defend him, or to shew the Weakness, or Inconsistency of the Evidence against him. In all Ecclesiastical Courts, they may sometimes proceed summarily, but even then the Fundamental Rules of the Court must be observed, as to Proofs and Witnesses, or else the Sentence is void ; but here the Sentence will take place, altho' there

there hath not been the least Colour of Justice in the whole Proceedings.

6. Here is no settled Course of Appeals in Case of a wrong Sentence. But where Men are liable to Mistake and Passion, a Right of Appeal is one of the Fundamental parts of Justice. And therefore Independent and Arbitrary Courts of Judicature, as all Congregational Churches are, are inconsistent with the common Rights of Mankind, and that due Subordination which ought to be in all Societies in order to the preserving Order and Justice among Men. But suppose, parochial Discipline so settled among us, as to allow a Liberty of Appeal, how would the Trouble, and Vexation, and Expence be increased, by going from the parochial Sentence to the Bishop's Court, and from thence still further? So that if there be some Inconveniences

cies in point of Distance, for persons to be summoned to appear at first so far from Home, yet there is some Compensation by the less Trouble and Charges, if due Care be taken to prevent Delays, and unnecessary Expences; which ought to be done: And those who do make the greatest Clamour against our Courts, are rather willing they should continue such as they may have Cause to complain of, than to do their Endeavours to reform them.

Thus I have endeavoured to shew the just Bounds and Limits of parochial Cures.

II. I now come to consider the just Measure of that Diligence which is required under those Limits. For our Church requires *Faithful Diligence* in Preaching, and Sacraments, and Prayers, and Reading the Holy Scriptures. If then we can understand

stand what this *Faithful Diligence* implies, we may come to satisfy our selves whether we do our Duty or not.

1. *Faithful Diligence* implies serious Application of our Minds to the main End and Design of our Holy Function: Which is to do good to the Souls of Men, especially to those committed to your Charge. And an idle, careless, santering Life; or one too busie and distracted with the Cares of the World, are not consistent with it. I do not go about to take you off from necessary Business, and reasonable Allowances, as to Health and Studies; but that the doing good to your peoples Souls, ought to be the principal and chief Design of your Thoughts, Studies and Endeavours. And if the people be satisfied that this is really your Design among them, you will find, that your Doctrine will be easier

easier received, your Persons esteem-
ed, and your Labours valued. It is
possible, you may meet with a
froward, peevish, self-willed people;
and it is hard when a Man is only
set to water and mend a Hedge made
up of Briars and Thorns; the more
pains he takes, the more Scratches
he may meet with; but if it be your
Lot, be not discouraged from doing
your Duty: Remember what sort
of people the Prophets were sent to,
and what Usage they had from them;
what Hardships and Reproaches
Christ and his Apostles underwent
from a very unkind World; but a
patient Continuance in well-doing,
gave them inward Satisfaction in the
midst of all, and did by degrees
gain the Christian Doctrine Access
to the Hearts of those who most op-
posed it.

2. It implies an honest and con-
scientious Care of discharging the
known

known and common Duties of your Function, as Preaching, Praying, Catechizing, Administring Sacraments, Visiting the Sick, &c. A diligent Person is one who neglects no good Opportunities of doing his Business, but watches for them, and studies to improve them to the best Advantage. Can those satisfy themselves that they use *Faithful Diligence*, who shamefully neglect their Cures, and care not how seldom they come at them, nor how they are supplied, if they make a good Bargain for their own Advantage? I cannot deny, but that according to the Laws of the Land, and the Canons of this Church, some Persons are allowed to have two several Cures, which must imply a Non-residence for some time at least, upon one of them. But they still suppose, that there are persons Resident upon them, who are allowed by the Bishop to be sufficient

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to discharge the necessary Duties of the place, and not to be taken up like Post-horses, the next that comes, and to be turned off at the next Stage. I think it a very great Fault in those who have Pluralities, that they look no more after the Curates they imploy, and that they do not bring them to the Bishop to be approved, and to have their Allowance fixed, before they imploy them. They think no more is required but to pay the Fees for a Licence; but I have, and shall endeavour to convince the Clergy of this Diocess, that Licences are not to be taken as *St. Peter took the Fish that first came with Money in the Mouth of it*; I hope to be able to satisfie them, that it is not the Fees that we aim at, but at Persons doing their Duties. And our Canons are expresse, That no Curate is to be allowed in any Cure of Souls, that hath not been examined

Can. 48.

mined and admitted by the Bishop or Ordinary having Episcopal Jurisdiction, and attested by the Hand and Seal of the Bishop. How then come Curates to officiate without ever coming to the Bishop at all, or undergoing any Examination by him? This is a plain Breach of the Canon, and ought to be reformed. I do not say, that such Licences as have customarily passed without the *Bishop's Hand and Seal*, are void; but I do say, That they are irregular and voidable, and none ought to be allowed, which are not according to the Canon; and that no Incumbent ought to take any one for his Curate till the Bishop hath allowed and approved him under his Hand and Seal. And this Remedy the Law gives us against the Inconveniencies which attend Pluralities by weak and insufficient Curates. But

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Can. 41.

no Man is excused either by Law or Canons from attending the Duties of his Place at some times in his own Person, and that *good Part of the Year*; in which time he ought to do the Duties of his Place with Diligence and Care; and to acquaint himself with his Parishioners, in order to the better Discharge of his Duty towards them. They have very mean Thoughts of their holy Function, that think the main Part of it lies only in the Pulpit (I wish even that were minded more) but all the Ways you can do good among your People, is within the Compass of your Duty; not meerly to instruct them in Religion, but to prevent Quarrels, and Contentions, and Meetings for Debauchery, which tend to corrupt Mens Minds, and draw them off from the Principles as well as Practice of true Religion: It is

is your Duty to endeavour to make them live like good Christians and good Neighbours, and to set Patterns your selves of Sobriety, Meekness, Charity, and of every thing Praise-worthy.

3. *Faithful Diligence* implies filling up your vacant Hours with the most useful Studies, as to the main End of your Function. For in your Ordination you solemnly promise to lay aside the Study of the World and the Flesh, and to apply your selves to the Study of the Scriptures, and such Studies as help to the Knowledge of the same.

But it may be seasonably asked by some, What Method and Course of Studies will best conduce to that End?

To this I shall endeavour to give a short Answer so far as it concerns the main End of your Function,

which it is most proper for me to consider at this time.

1. Look well to the Temper of your Minds, that it be humble, sober, and religious. For a vain, affected and self-opinionated Person can never have an inward and hearty Relish of Divine Truths. The Scriptures will appear to him either too plain and easie, or too obscure and intricate; some things will seem low and flat, and others too lofty and Poetical. Those who read not with a good Mind, will have always something or other to cavil at. It is a mighty Advantage in all Spiritual Knowledge to come to it with an unbiassed Mind, free from the Power of Prejudice and evil Inclinations. For these give a strange Tincture to the Mind, and hinder the clear and distinct Perception of Revealed Truths, as above the Natural Facul-

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ties which God hath given us. Some are therefore so fond of Philosophical Speculations, that unless the Letter of the Scripture suits with them, they are ready to despise it, and only Shame and Fear keep up any Reverence for it in them. Some are altogether for Mathematical Evidence and Demonstration, as though the Way to Salvation were to be shewed by Lines and Figures; Why do they not first run down all Laws and History, because they are not capable of Mathematical Evidence. And it argues a far greater Measure of true Understanding to know when to be satisfied, than to be always disputing and cavilling. The plainness of Scripture in some places, is no more an Offence to one that wisely considers the Design of it, than a beaten Road is to a Traveller who desires to know which is the true

Way to his Journeys End, and the plainer it is, the more he is satisfied with it. But the Scripture wants not its Depths, which require a very Attentive and Considering Mind, and will afford Matter for Exercise of Thoughts, and frequent and serious Meditation. The Excellency of the Scripture is, That all necessary things are plain; and such as are not so, although they are not necessary to be known for Salvation, yet require our Diligence to understand them; and give great Satisfaction as far as we can know them.

2. Not to perplex your Minds with Difficulties above your Reach, as in what relates to the Eternal Decrees, and the particular Manner of that Unity of the Godhead which is consistent with the Trinity of Persons. For since the
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Scripture doth assert both, we may safely be contented with what the Scripture reveals, although the Manner of it be incomprehensible. And as to the other the Scripture is clear and positive, as to the Moral Parts of our Duties ; and if we are to seek how to reconcile them with Gods Decrees, we have this certain Rule to go by, That without doing our Duty, we cannot be happy ; but we may without understanding how the Freedom of our Wills is consistent with the Divine Prescience and Decrees.

3. Not to fix plain and necessary Duties upon new and unaccountable Theories. As for instance ; There are no Duties of greater Consequence, than the Love of God and our Neighbour : But it would be unspeakable Mischief to Religion to fix the Love of

God upon so absurd a Principle as his being the immediate Cause of all Sensation in us. And it would have made the Christian Doctrine ridiculous to found its Fundamental Precepts on extravagant Notions, and Mystical Contemplations. And so for the Love of our Neighbours to allow only a Love of Benevolence and Charity, and not of *Delight* and *Complacency*, is to make Nice Distinctions, where God hath made none. But to take away the Love of Complacency in Friends and Relations, and the Blessings which God gives for the Comfort of Life, is to overthrow the due Sense of God's Goodness in giving them; and to take away a great Measure of that Gratitude we owe to God for them. But when any seem very fond of such Notions, and shew so much

much Self-Complacency in them; it is impossible upon such Principles that they should love their Neighbours as themselves.

4. If you would understand the New Testament aright, fix in your Minds a true Scheme of the State of the Controversies of that Time, which will give you more light into the true knowledge of the Scriptures, than large Volumes of Commentators, or the best Systems of Modern Controversies. As what the *Jewish* Notions of Justification by Works, and Expiation of Sin, were; and of God's Decrees of Election and Reprobation as to themselves: And what the Principles of the Judaizing Christians were, as to the joyning the Law and the Gospel, and the *Pythagorean* Superstition together. And what the *Gnosticks*, who were pro-
fessed

fed Liberty, held, as to Grace, Redemption, Liberty, Government, &c. All which tend very much to the clearing the Sense of the New Testament.

5. Where the Sense appears doubtful, and Disputes have been raised about it, enquire into the Sense of the Christian Church in the first Ages, as the best Interpreter of Scripture; as whether the Apostles left Bishops or Presbyters to succeed them in the Government of Churches; Whether the Apostles appointed the Lords Day to be observed as the Day of Publick Worship; Whether Baptism were not to be Administred to Infants as well as Circumcision, both being Seals of God's Covenant; Whether Divine Worship doth not belong to Christ, and were not given to him in the

the Hymns and Doxologies of the Primitive Church; and, Whether Divine Worship can be given to any Creature; Whether the Form of Baptism was not understood so, as to imply a Trinity of Persons; and, Whether all true Christians were not Baptized into this Faith; and consequently, Whether denying the Trinity be not renouncing Christian Baptism. These and many other such Questions of great Importance, receive great Light from the Writings of the first Ages.

But some Rules may be very useful for right judging the Sense of those Times.

1. To distinguish the Genuine and Supposititious Writings of that Time. This hath been examined with so much Care by Learned Men

Men of this last Age, that it is no hard matter to make a true Judgment about them.

2. In those that are Genuine, to distinguish the Sense of the Church, delivered by them, from their own particular Opinions; the Sense of the Church is best known by Publick Acts, as by Creeds, Sacraments, Hymns, Prayers and Censures of such as oppose or contradict them.

3. To put a Difference between the Authority of private Persons, and of the Bishops and Governours of the Church, who may be presumed to understand the Sense of the Church, and the Doctrine of the Apostles better than the other. And so *Clemens*, *Ignatius*, *Polycarp*, *Theophilus*, and *Irenaeus* are more to be trusted, as to the Sense and Practice of the Christian Church, than

than such as *Hermes*, and *Papias*, and *Tatianus*, who had neither the Judgment nor the Authority of the other.

4. That may be justly looked on as the Sense of the Church, which is owned both by the *Friends* and the *Enemies* of it. The *Enemies* of Christianity charged them with many Things, which the *Apologists* utterly denied. Now we find *Pliny* charging the Christians with singing Hymns to Christ, as to God; several Christian Writers of that time mention this, but never go about to soften, or to excuse, or deny it. And so we find *Lucian* deriding the Christians for the Doctrine of *Three* and *One*; which the *Apologists* of that time are so far from denying, that they assert and vindicate it, as appears by *Athenagoras* and others.

But

174 *Of the Duties and Rights, &c.*

But these things I only touch at, to shew how the Sense of the Church is to be taken, and how from thence the Sense of the Scriptures may be cleared.

And on as the Sense of the Church
which is owned both by the Private

And on as the Sense of the Church
which is owned both by the Private

And on as the Sense of the Church
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OF THE

Particular Duties

OF THE

PAROCHIAL CLERGY,

AT A

VISITATION,

October 27th 1696.

My Brethren,

AS often as it pleases God in his wise Providence to bring me among you in the ordinary Course of my Visitation, I cannot satisfy my self that I do my own Duty, unless I put you in mind of doing yours. We live in an Age, wherein the Contempt of the Clergy

is

is too notorious not to be observed; but the true Reasons are not so well considered as they ought to be. Some, to increase the Contempt of the Clergy, have given such Reasons of it, as seem to make it a light and jesting matter; but truly it is very far from being so: For the Contempt of Religion is oft-times both the Cause and the Effect of it. It is not at all to be wondred at, that those *who hate to be reformed*, should hate those whose Duty and Business it ought to be to endeavour to reform them. But when Religion is struck at through our Sides, we ought with Patience to bear the Wounds and Reproaches we receive in so good a Cause. *Wo be to us*, if those who are Enemies to Religion, *Speak well of us*: For it is a strong Presumption that they take us to be of their side in our Hearts, and that we are distinguished only by our Profession, which

which they look on only as our Trade. And we give too much occasion for such Suspensions of us, if we do not heartily concern our selves for the Honour and Interest of true Religion in the World, whatever we may suffer, as to our Reputation, for the sake of it. It is possible, that if we go about to humour such Persons in their Infidelity and Contempt of Religion, we may escape some hard Words for the present, but they cannot but have the greatest inward Contempt and Hatred of all those who live upon Religion, and yet have not the Courage to defend it. And what Satisfaction can such have, when they reflect upon themselves, and think what Occasion they have given to confirm such Persons in their Infidelity, and to make them think the worse of Religion for their sakes.

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The best thing we can do to recover the Honour of Religion, and to set our Profession above *Contempt*, is to apply our selves seriously and conscientiously to do our Duties. For if others find that we are in earnest, and make it our great Business to do all the Good we can, both in the Pulpit, and out of it; if we behave our selves with that Gravity, Sobriety, Meekness and Charity which becomes so holy a Profession, we shall raise our selves above the common Reproaches of a spiteful World; and do what lies in us to stop the Mouths at least, if not to gain the Hearts of our Enemies.

For the Real Esteem which Men have of others, is not to be gained by the little Arts of Address and Insinuation, much less by complying with them in their Follies; but by a steady and resolute Practice of our own Duties, joyned with a gentle, and

and easie, and obliging Behaviour to others, so far as is consistent with them. But a proud, supercilious, morose Behaviour towards our greatest Enemies, doth but make them much more so; if any thing softens them, and makes them more tractable, it will be, joyning a Firmness of Mind, as to our plain Duties, with Humility and Kindness in other Matters.

But what are these Duties we are obliged to so much Care in the Performance of?

There is a Twofold Obligation lying upon us.

I. That which is more General from the Nature and Design of our Employment; which is *the Cure of Souls*; and that requires great Diligence and Faithfulness, frequent Recollection and Consideration, serious Application of our selves to Divine Studies and Employments; a prudent

Use of the best Methods for the convincing, Reproving, Directing and Assisting those who are committed to our Care. And all these are implied in the Nature of our Office, as it is set forth in holy Scripture; wherein we are described as *Labourers*, and therefore must take Pains, and not spend our time in vain and idle Company: As *Teachers*, and therefore ought to be stored with a good Stock of Knowledge our selves, and be ready to communicate it to others: As *Pastors*, and so we ought to look after our Flock, and not leave them to the careless Management of others, who are not so concerned for their Welfare, as we ought to be: As *Ambassadors from Christ*, and therefore we are bound to look after the Business we are sent upon, and the great Weight and Importance of it, as to your own Salvation as well as others: As *Stewards*

of

of the Mysteries of God, and the first thing required in them, is to discharge their Trust honestly and faithfully, remembering the Account they must give to God.

But these, you may say, are only general Things, and do not determine and limit our Duties within certain Bounds; what is there which doth fix and determine our Duties, as to the Station we have in this Church?

II. I come therefore to the *Special Duties*, which by the Ancient Constitution of this Church, and the Ecclesiastical Laws of it, are incumbent upon you. And you are to consider, that as the Law hath taken Care for your Maintenance and Subsistence in doing your Duties; so it doth suppose your careful Performance of them, not only in regard to the general Rule of Conscience, but to that particular Obli-

Of the Duties and Rights

gation you are under, as Members of this Church. And therefore I shall enquire into Two things :

I. The Duties you are under this Obligation to.

II. The Incouragement which the Law gives in Consideration of it.

I. The Duties are of two sorts :

1. Publick and Solemn. 2. Private and Occasional.

1. Publick and Solemn ; and those either respect the Time, or the Duties themselves.

1. As to the times of Solemn and Publick Worship, which are the Weekly Lord's Days, and the other Holy-days.

1. I begin with the Observation of the Lord's Days ; which I shall now make appear to have been set apart for the solemn Worship and Service

vice of God, especially by the Clergy, from the first Settlement of a Parochial Clergy in this Church.

In a Provincial Council held at Cloveshoo or Cliff, A. D. 747. the King and Nobility being present (where the Archbishop and Bishops Assembled for Regulating the Worship of God in Parochial Churches then newly erected in many places) the Fourteenth Canon is express, That the Lord's Day ought to be celebrated with due Veneration, and devoted only to Divine Worship (*Divino tantum cultui dedicatus*) and the Presbyters are required to officiate in their several Churches, both in Preaching and Praying; and the People are required to let alone their common worldly Affairs, and to attend the publick Worship of God.

*Concil. Angl.
I. 249.*

The Canons of Egbert, Archbishop of York, are as clear and full for the Northern Province, as the other for

Concil. Angl.
I. 258.

the Southern, Can. 104. That nothing is to be done on the Lord's Day, but what tends to the Worship and Service of God. And Can. 36. That Christ sanctified the Lord's Day by his Resurrection. But because these Canons of Egbert will be often used, something ought to be observed to clear their Authority. Sir H. Spelman saith, there are several Ancient MSS. of them. Mr. Selden owns the Cotton MS. to be of the time of H. 1. but he suspects that another made the Collection, and put it under his Name. But it was no strange thing for the great Bishops to make such a Collection of Canons; for so it was done by Theodore, Archbishop of Canterbury; by Theodulphus of Orleans; Isaac Lingonensis, Chrodegangus, Herardus, Hincmarus, &c. And Egbert was not only a great Man, Brother to the King of the Northumbrians, but a great Promoter of Learning and Eccle-

Ecclesiastical Discipline, as appears by his Dialogue about the latter, and the other by *Alcuin's* Epistles about him, and *Bede's* Epistle to him a little before his death. And the Agreement between the Capitulars and these Canons, might come from *Alcuin's* carrying them over into France with him.

Egbert. Dial. de Ecclef. Instit. cum Bede Epistol. ad Egbert. Dublin, 1664.

In the *Saxon Canons*, c. 24. it is said, that the Lord's Day on which our Saviour rose from the dead, is to be devoted wholly to the Service of God, excepting only Works of Necessity and Charity.

Concil. Angl. l. 600.

These Canons are translated from those of *Theodulphus*, Bishop of *Orleans*, A. D. 786. And it is observable, that as the Christian Religion prevailed in these Northern Parts, so the Religious Observation of the Lord's Day was enforced, as appears by the Canons of the *Gallican Church*, as well as this. As in the famous Canon

Canon of the Council of *Mascon*, A. D. 585. where the Bishops Assembled, complain of the Neglect of the Lord's Day, and agree to put the People upon a stricter Observance of it. And so before in the Council of *Orleans*, A. D. 538. But in both these Canons they avoid a Jewish Superstition as well as profane Neglect. They allowed both Works of Necessity and Conveniency, and did not place the Observation in a bare Rest, but in Attendance on the Worship of God; and forbid all manner of Secular Employments which were inconsistent with it. Nay, *Theodulphus* his Canon goes higher, *Tantummodo Deo vacandum*, the whole Day ought to be spent in Religious and Charitable Employments.

The greatest Men in our Saxon Churches asserted the same. *Bede* saith, That the Apostles appointed the Lord's Day to be observed with Religious Solemnity,

lemnity, and therein we ought to devote
our selves to the Worship of God; *tan-*
tum divinis cultibus serviamus. And to
the same purpose speaks *Alcuin*, who
was bred up under *Egbert*, Arch-
bishop of York, and calls *Bede* the
greatest Master of his Time; and in
another place he saith, One Seventh
Day is set apart among Christians, as
another had been among the Jews
for the Service of God; and that
therein we ought to attend to the
Care of our Souls, and to lead a spi-
ritual Life.

Alcuin. de
Offic. c. 27.

Epist. 5. 49.

De Off. c. 40.

Bede distinguishes between the
Patriarchal and Jewish Sabbath. The
latter he calls a Carnal, and the other
a Spiritual Sabbath; the former lay
in a strict Abstinence from Labour,
but the other in Prayer, and Devo-
tion, and Spiritual Contemplations.
The Jewish Rest, he saith, was *inutile,*
languidum, & luxuriosum. For the
Jews allowed Recreations and Sports
on

Bed. T. IV.
586.

V. 583
II. 580
VIII. 930

August. in
Psal. 91. in
Psal. 32. 11. 6.

De 10 Chor-
dis.

Euseb. Præp.
l. 8. c. 7.
Joseph. 2. c.
Appion.
Aben-Ezra in
Exod.
Kimchi ad
Psal. 92.
Menass. Con-
cil. in Exod.
Q. 35.

on their Sabbath; vacant *ab opere bono*, saith he, *non ab opere nugatorio*. Vacant *ad nugas*, saith *S. Augustin*; but he saith, they had better plow or dig, than dance on that Day, or sit in the Theater. And he tells us, That the Heathens objected against the Jews, That they spent one Day in the Week in Idleness. For they supposed the bare Rest to be the Sanctification of the Day which was commanded, and the spending any part of it in the publick Worship, to be voluntary Devotion. But the better sort of the Jews thought the Rest was appointed for the Knowledge of the Law, and Spiritual Employments. So *Philo*, *Josephus*, *Aben-Ezra*, *Kimchi*, and *Menasseh ben Israel*. It seems most reasonable in this Case to distinguish between the Legal Rest strictly required by the Fourth Commandment, and the Original Rest in Remembrance of God's resting from the

the Work of Creation. The former was a Sign between God and the People of *Israel*, as it is often called in Scripture; and the other was a Commemorative Sign, but such as excited them to the Worship of the Creator; and therefore the *Patriarchal Sabbath*, as *Bede* observes, was of a spiritual Nature. And such a spiritual Sabbath, as *S. Augustin* calls it, ought to be observed by Christians in the Duties of God's Worship, as well as in spiritual and holy Thoughts. But the *Jewish Sabbath*, he often saith, doth not oblige Christians. I the rather mention him, because *Bede* followed his Doctrine herein; and that of *Gregory I.* who was the great Instrument of promoting the Conversion of our Ancestors to Christianity. And he declares himself fully, both as to the Cessation of the *Jewish Sabbath*, and the religious Observation of the Lord's day.

Aug. c. Faust.
l. 6. c. 4.
c. *Adimant.*
c. 2. 16.
De Genes. ad
lit. c. 11. 13.
Epist. ad
Jan. 119.
c. 13.

Greg. Epist.
l. 11. c. 3.

It seems there were some then, as there are among us now, who were for the strict Observation of the *Saturday Sabbath*. But Gregory saith, They might as well insist upon *Circumcision* and *Sacrifices*, as the *Jewish Sabbath*. But yet he adds, We ought on the Lord's day to abstain from worldly Employments, and devote our selves unto Prayers, that we may make some Amends for the Weeks Negligence, by the Devotions on that Day. And this devoting the Lord's day to the Service of God, is entred into the Body of the Canon Law; and taken out of *Ivo*, and by him from the Canons of the *Gallican Church*, as appears by several Councils.

De Consecr.
Dist. 3. c. 16.

Conc. Narbon.
Can. 4.
Concil. Cabil.
c. 18.
Aquisgran.
c. 81.
Arelat. VI.

Can. 16. Rhem. 2. c. 35. Paris. VI. l. 3. c. 5.

De Officio
Archipresbyt.
f. 29. 2.

Our *Lyndwood* mentions that Canon as in force here, *Die Dominica nihil aliud agendum, nisi Deo vacandum*. And he takes some Pains to explain it, by distinguishing, 1. Works

of the Parochial Clergy.

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1. Works servile materially and formally, as Plowing, Sowing, Markets, Law-days, &c. these are generally forbidden.

2. Acts spiritual materially and finally, as all Acts of Piety and Devotion, and these we ought to attend upon with Care and Diligence.

3. Acts not servile in themselves, but done for a servile End, as Studies and Designs for Gain.

4. Acts servile in themselves, but not so in their End; as the Man's taking up his Couch on the Sabbath-day, whom Christ cured.

He affirms, that there is a Moral Part in the Fourth Commandment, which, he saith, is a *spiritual Rest*, or a Time set apart for God's Service :

Which he takes from *Aquinas*, who saith the Substance of the Command is Moral ; but he doth not make it to be One day in Seven, but some

*Aquin. in
Sent. l. 3.
Dist. 37.
Qu. 1. Art. 2.*

de-

determinate time, which, he saith, the Church may appoint; but then it must be imployed in the Service of God (*vacare rebus divinis*) as things were said to be sanctified under the Law, which were applied to God's Service. But notwithstanding this Judgment of *Aquinas*, some great Men in the Church of *Rome* have thought One day in Seven, Moral; and that the Proportion which God himself had appointed, cannot be lessened. For altho' Mankind could not by natural Reason find out the Proportion, yet being once revealed, it doth not cease to oblige, unless something figurative and symbolical, or peculiar to the *Jewish* Nation be discovered in it.

*Bell de Cultu
Sanct. l. 3.
c. 11.*

Bellarmin makes that the Reason of the Institution of the Lord's day, because God's Law required that One day in Seven should be set apart for the Worship of God; but the Apostles thought

thought it not fit to observe the Jewish Sabbath, and therefore changed it into the Lord's day.

Covarruvias saith, That all Divines agree with *Aquinas*, That there is something Moral in the Fourth Command, which continues to oblige; and that the Lord's day is of Divine Institution. And to him the Roman Editors of the Canon Law referr, as to this matter.

*Covarruv.
Car. Resol.
l. 4. c. 19.*

Azorius confesseth, That the Observation of the Lord's day hath something of the Divine and Natural Law in it, which requires One day in a Week should be consecrated to the Service of God, and that it is most agreeable to Reason. And he adds, That *Panormitan*, *Sylvester*, and other Canonists held the Lord's day to be of divine Institution.

*Azor. T. 2.
C. 2. Q. 2.*

Suarez saith, That the Church doth observe One day in Seven by Virtue of the divine Law; that Pro-

*Suarez de Rel.
Tr. 2. l. 2. c. 1.
n. 15.
c. 4. n. 8, 9.*

O

portion

portion being so agreeable to Natural Reason, that it cannot be altered.

Waldens. T. 3.

Tit. 16. c. 140.

Thomas Waldensis, who lived here in the time of H. 5. observes, That even then there were two Extreams in Mens Opinions about the Observation of the Lord's Day; some allowed no kind of Work, and others, any. But he shews, That the Law of Nature requires some Solemn Days for Divine Worship; and that then there ought to be a Rest from other Labours, because they hinder the Mind from that Attention necessary to the Service of God: And necessary Works are left to a few, that others may be more at Liberty.

Ina LL. c. 3.

Withred. c. 10.

Alfred. c. 10,

11.

Athelst. c. 9.

Edgar. c. 19.

Ethelred. c. 15.

Canut. c. 15.

In the Saxon Laws we find many against the Profanation of the Lord's day by slavish Employments, by Markets and Trading, by Folkmoets and Law-suits, &c. So that great care was taken then, that the Lord's day should be duly observed.

After

After the Norman times, we have several Constitutions to enforce the strict Observation of the Lord's day.

In the time of *H. 6. Hubert de Burgo* Concil. Angl. II. 238, 372, 599. saith, That Custom may derogate from other Holy-days, but not from the Lord's day; because they are not commanded by God, as that is.

Since the Reformation our Book of Homilies goes upon the same Pupill. Oculi, part. 9. c. 6. Grounds which were used in the Saxon times, viz. That the Jewish Homily of the Sabbath doth not oblige us; but Place and Time of Prayer. however to observe the like Proportion of time, and devote it to the Service of God.

Mr. Hooker saith, That we are to account the Sanctification of one day Eccles. Polity, l. 5. n. 70. in Seven a Duty which God's immutable Law doth exact for ever.

But what is meant by this Sanctification of One day in Seven? If it be understood according to the old Canons, it will fill scrupulous Minds

with more Doubts and Fears about the right Observation of it.

Orig. in Numer. Hom. 23. c. 28.

Origen saith, The Observation of the Christian Sabbath lies in these things; 1. A Forbearance of worldly Business. 2. Attendance on the Publick Worship. 3. Divine Meditation on Things invisible and future. *Hæc est observatio Sabbati Christiani.* And in another place, he requires besides Publick Worship, private Meditation and Reading the Holy Scriptures.

Hom. 9. in Levit. 16.

Chrysostom. Hom. 5. in Matth. 2 Hom. in Joh. Hom. 5. ad Pop. Antioch. Hom. 10. in Gen.

S. Chrysostom insists very much upon the same in several places, and on different Occasions. And altho' it be in his popular Sermons, yet he would certainly not put them upon any thing, but what he thought very fit to be done. And they must have a mean Opinion of him, who think his Eloquence carried him too far in this matter.

I shall conclude with the Opinion of *Lyndwood*, a Learned and Judicious Canonist ; and he observes a Three-fold Sanctification of the Lord's day.

*De Officio
Archipresbyt.
v. Sanctifices.*

1. By Abstinence from Sin, which is necessary at all times. 2. By Abstinence from such bodily Labours as hinder the Mind's Attendance upon God's Service. 3. By the whole Imployment of our Minds in Divine Matters ; and this he calls the perfect Observation of it.

These things I have the more largely insisted upon, to shew, That the Religious Observation of the Lord's day, is no Novelty started by some late Sects and Parties among us, but that it hath been the general Sense of the best part of the Christian World, and is particularly inforced upon us of the Church of *England*, not only by the Homilies, but by the most ancient Ecclesiastical Law among us.

O 3

But

Of the Duties and Rights

But this is not all, for the Ancient as well as Modern Canons require the Observation of Holy-days likewise. The Canons of *Egbert* require not only Prayers, but Preaching then, *Can. 1. 3.*

The Council of *Cloveshoo*, *Can. 13*, distinguishes the Holy-days relating to our Saviour, from the rest; and saith, They are to be observed in a solemn and uniform Manner, and the rest according to the *Roman Martyrology*: Which, I suppose, were those repeated then in the Diptychs of the Church; which Custom continued longer at *Rome*, than in other Churches; but it was generally disused before the time of *Charles the Great*.

*Alcuin. de
Offic. c. 40.
Wiltbem. in
Diptych.
Legd. c. 8.*

The Custom in *Rome*, in *Gregory's* time, was to observe the Saints Days with the solemn Service at one Church, as appears by his *Homilies* on the Evangelists, which were many of them preached on those Occa-
sions;

sions; as of *S. Felicitas*, *Hom. 3.* *S. Agnes*,
Hom. 11, 12. *S. Felix*, *Hom. 13.* *S.*
Pancrace, *Hom. 27.* &c. and of o-
thers who were Roman Martyrs;
and therefore had a particular So-
lemnity appointed for them. But
as to other Saints Days, it appears
by the *Antiphonarius* and *Sacramentary*
of *Gregory I.* that they had particular
Anthems and Collects proper for
them in the Offices of the Day; but
I do not find that the Generality of
the People were so strictly tied up,
when the Offices were over, as they
were on the Lord's days, and the
greater Festivals relating to our Sa-
viour. In the Council of *Cloveshoo*,
Can. 13. I observe, that the *Natalitia*
Sanctorum, i. e. the Anniversary Saints
Days, were observed with particular
Psalmody and Anthems; and *Can.*
17. the Days of *Gregory* and *Augustin*,
the Two great Instruments of con-
verting the Nation, were only to be

Of the Duties and Rights

kept as Holy-days by the Clergy, without any particular Obligation on all the People. So that the Holy-days of strict Observation then, seem to have been no other than those which relate to our Saviour, called *Dominicæ Dispensationis in carne Festivitates*; the rest had some proper Offices which were performed on their Days; but the People were to attend them, as well as they could; but after there was not this strictness required, as upon the greater Holy-days; and as it was in the Church of Rome afterwards, when they made the Obligation of Conscience to extend to all Holy-days appointed by the Church. But it is observable, (1.) That this Obligation is taken from those Canons which mention only the Lord's day, as appears by *Bellarmin.* (2.) That they kept up the Distinction of greater and lesser Holy-days. (3.) That they allow the

*De Cultu
Sancti. l. 3.
c. 10.*

the Bishop to dispense, as to some Works on Holy-days. *Lyndwood observes, that the Abstinence from Work is not alike, but as the Church hath required it; and that if a Bishop's Licence cannot be had, a less will serve. Our Church, Can. 13. requires Holy-days to be observed with Works of Piety, Charity, and Sobriety; but gives no Rule as to Abstinence from Works, or the strict Obligation of Conscience.* *De Feriis, f. 52.*

2. I now come to the particular Duties of the Clergy on the Days which are solemnly devoted to the Service of God.

1. The constant and devout Attendance upon, and solemn Reading the Prayers of the Church, as they are appointed. In the old Saxon *Canons* *Concil. Angl. I. 247.* the Presbyters are required to officiate constantly at Prayers in their Churches; so in the Council at *Cloveshoo; Can.*

Can. 8. the Canons of Egbert, Can. 2. Canons of Edgar, Can. 45.

But how if the People will not come to the Prayers? You ought, what lies in you, to remove the Causes of such Neglect; which arises generally from these things; either a gross Stupidity and Regardlessness of Religion, which is too common in the World, or from Prejudice and Principles of Education, or the Interest of a Party; or from not Reading the Prayers with that Attention and Devotion which is fit to raise an Esteem of them. The other two, you ought to do what you can to remove; but this is your own Fault if you do it not. We are not to please the Fancies of People by an affected Variety of Expressions in Prayers; but we ought to do what we can to excite their Affections, which is done as much by the due manner of Reading, as by

Figures

2. Figures in Speaking. And the People are uneasie at staying, when they see the Minister read them so fast, as though he minded nothing so much as to be at the end of them; or when he mangles them so, as if he had a mind to make the People out of love with them.

2. The next Duty is Preaching; and truly that need to be looked after, when the Esteem of our Profession depends so much upon it. We have none of those Methods which those on both sides make so much use of; we can neither comply with the People in Gestures, and Phrases, and Enthusiastick Heats, nor with the Superstitious Devotions and Priest-craft of others. Of all Churches ours hath the least Reason to be charged with it, since they let go so many Advantages over the People by the Reformation. Thanks be to God, we have Scripture, and Reason,
and

and Antiquity of our side ; but these are dry and insipid things to the common People, unless some Arts be used to recommend them. But since our main Support lies in the Honesty and Justice of our Cause, without Tricks and Devices, we ought to look very well to that part of our Profession which keeps up any Reputation among the People ; and that is Preaching. Those who are so weak or lazy, as to be glad to have that laid aside too, in a great measure, never well considered the Design of our Profession, or the way to support it. It's true, for some time Preaching was an extraordinary thing in the Church ; and none but Great and Eloquent Men of Authority in the Church were permitted to preach, and the greatest Bishops were then the Preachers, as appears by the Sermons of *S. Ambrose*, *S. Chrysostom*, *S. Augustin*, &c. And even
some

some of the Bishops of Rome, what-
 ever *Sozomen* saith, were frequent Soz. l. 7. c. 19.
 Preachers, as appears by *Gregory's*
Homilies on Ezekiel and the Gospels.
 And if it were not then practised he
 did very ill to complain of the Regest. l. 1. 24.
 Burden of it, and the Danger of
 neglecting it. But in other Churches
 while the Bishop and the Presbyters
 lived together, before parochial Cures
 were settled, the Presbyters had no
 constant Office of preaching, but as
 the Bishops appointed them occasio-
 nally. But afterwards, when the
 Presbyters were fixed in their Cures,
 they were required to be very dili-
 gent and careful in preaching, or in-
 structing the people committed to
 their Charge, as may be seen in ma-
 ny early Canons of the *Gallican* Concil. Vasens.
 Church; and so it was here in *Eng-* 2. c. 2.
land: Council of *Cloveshoe*, c. 8. 14. Turon. 3. c. 17.
Egbert, Can. 3. and that not only in Arel. 6. c. 10.
 the moving way in the Pulpit, but Capitul. 1.
 in 160.
Reginold. 1.
205.
 in Capit. l. 1. c. 5.

in the familiar and instructing way, which we call *Catechizing*; *Concil. Cloveshoo, c. 11. Can. Egbert. 6.* Both ought to be done, because they are both very useful. The Principles and Foundations of Religion must be well laid, to make the people have any Taste or Relish of preaching; otherwise it is like reading *Mathematicks* to those who understand not Numbers or Figures. *Eras.* *mus* observes, that the Sense of Religion grows very cold without preaching; and that the Countess of *Richmond*, Mother to *H. 7.* had such a Sense of the Necessity of it in those times, that she maintained many Preachers at her own Charges, and imployed Bishop *Fisher* to find out the best qualified for it. And since the Reformation the Church of *Rome* hath been more sensible of the Necessity of it, as appears by the Council of Trent. Cardinal Borro-

Erasm. Prae-
fat. ad Eccles.

Sess. 24. c. 4.
de Reform.

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meo, one of the most Celebrated Saints since that time, frequently insists upon it, gives Directions about it, and speaks of it as a thing, which tends very much to the Glory of God, and the Salvation of Souls. And to the same purpose other Great Men among them, as Cardinal Pa-

Act. Eccles. Mediol. 442, 450. Paleot. de Administr. Eccles. Botton, part. 2. p. 34. Godeau sur les Ordres, p. 458. Bordenave des Eglis. Cathed. dral. p. 670.

leotus, Godeau, Bordenave, and others. Would it not then be a great Shame for us, who pretend to a Zeal for Reformation and the true Religion, to neglect or lessen the Reputation of those things which our Adversaries have learnt from us, and glory in them; and those are Diligence in Preaching and Catechizing? Which none can despise who value Religion, none can neglect who have any Regard to the Interest or Honour of their Profession.

3. The next Duty is the solemn Administration of the Sacraments, which ought to be done in the public

lick Assemblies, where there is not a great Reason to the contrary. The Saxon Canons are exprefs, That Baptism, unless in Case of Necessity, should be administred only in due Times and Places, *Egber. Can.* 10,

11. While the Ancient Discipline was kept up, and Baptism only celebrated at the great Festivals, there was a Necessity of its being publick; and the Catechumens underwent several Scrutinies, which lasted several days in the Face of the Church, as *S. Augustin* observes, after they had been kept under private Examination for some time before. But when whole Nations were not only converted, but Infants generally baptized, the former Method of Discipline was changed. But yet the Church retained her Right as to Satisfaction about the due Admission of her Members. And that is the true Reason why, after private Baptism,

the

Tertul. de Baptis. c. 19.

Leo Ep. 78.

Ambros. Serm. 61.

Theodulph. de Ordine Baptis. c. 8.

Alcuin. de Bapt. Cerem.

P. 1151.

August. de Symbol. ad Catech. l. 2. c. 1.

De Fide &

Oper. c. 6.

August. Serm. 160.

the Child is required to be brought to the publick Congregation. For Baptism is not intended to be done before a select Number of Witneses, but in the Face of the Church, which is the regular and solemn Way; however, the Bishop may dispense in some particular Cases, which he judges reasonable. At first Baptism was administred publickly, as Occasion served, by Rivers; as Bede saith, *Paulinus baptized many in the Rivers, before Oratories or Churches were built.* Afterwards the Baptistry was built at the Entrance of the Church, or very near it; which is mentioned by *Athanasius, S. Chrysostom, S. Ambrose, S. Augustin, &c.* The Baptistry then had a large Bason in it, which held the Persons to be baptized, and they went down by Steps into it. Afterwards when Immersion came to be disused, Fonts were set up at the Entrance of Churches:

Bed. l. 2. c. 1.

P

But

But still the place was publick. But in Case of Necessity there is a Form prescribed; and I do not see how any, without leave, can use the Form of Publick Baptism in private Houses; which is against both our Ancient and Modern Canons. In the *Greek Church* it is Deprivation to do it; and the Synod under *Photius* confirms it, both as to the *Eucharist* and *Baptism*, because publick Order is to be preserved. But it is there understood to be done in Opposition to the Bishop's Authority, whose Consent may make the Case different, if they judge it reasonable. But Ministerial Officers are not Judges in an equitable Case against a standing Rule.

*Concil. in
Trullo, Can.
31, 59.*

*Syn. A. & B.
Can. 12.*

4. Another Duty of the parochial Clergy is, to be able and ready to resolve Penitential Cases, which relate to the Internal Court of Conscience, and not the External and Judiciary

diciary Court, which respects the Honour of the Church, as to scandalous Offences committed by the Members of it. And this takes in the *Private and Occasional* Duties of the parochial Clergy; for they ought to inform themselves of the Spiritual Condition of their People, that they may be able to give suitable Advice and Directions to them both in Health and Sicknes: But chiefly to be able to give them safe and seasonable Advice under Troubles of Conscience by reason of wilful Sins.

Duarenus, a very considerable Lawyer, thinks the main Business of the Clergy, as to the Cure of Souls, lies in the Power of Binding and Loosing, *i. e.* in dealing aright with the Consciences of Men, as to the Guilt of their Sins. And the Rules of the Penitential Court, are different from those of the Ecclesiastical Court, as well as the End is different. In the

*Duaren. de
Benef. l. 2. c. 7.*

Saxon times, there were both here.

There were Ecclesiastical Law which

Concil. Angl.

I. p. 194.

Theod. Capit.

55, 57.

L. L. Canut.

c. 22, 23.

L. L. Edmund.

Cap. 4.

related to Judicial Cases, wherein a publick Penance was enjoined in order to the Churches Satisfaction.

But there were many Cases which

were not publick, and yet great Care

was to be used, as to the Direction

of Penitents, as appears by the Peni-

tentials of *Theodore* and *Bede* in the

Saxon times. Whereby we learn that

a Difference was to be observed, as

to the Nature of Offences, and the

Circumstances of Persons and Actions,

and the Measure of Contrition;

and the particular Method is set down

in the penitential Books, which was

in very material Circumstances diffe-

rent from the Methods used in the

Church of *Rome*. But it is a thing

necessary for every parochial Mini-

ster to be able to settle doubting

Consciencs, and to put them into

the best Methods of avoiding Sin

for

Theod. Capit.

c. 13.

Regino I. 300.

for the future, without which the Absolution of the Priest signifies nothing. For where God doth not absolve, the Church cannot.

5. Giving a good Example to the People committed to your Charge. This is often mentioned in the Saxon Canons: Council at *Cloveshoo*, c. 8. Canons of *Egbert*, 14, 15, 18, 19, 33. in the Laws of *Alfred*, c. 3. of *Edward* c. 3. *Constit.* of *Odo*, c. 4, 5. of *Edgar*, 57, 58, 59, 60, 61, 64. of *Canutus*, c. 26. And in the Conclusion of one Collection of his Laws are these Words, *Happy is that Shepherd, who by his good Life and Doctrine leads his Flock to Eternal and Heavenly Joys; and happy is that Flock that follows such a Shepherd, who hath rescued them out of the Devil's Hands, and put them into God's.*

6. Lastly the Performance of all these Duties supposes a constant Residence among your People; without which

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it is impossible to discharge them in such a manner, as to give them and your selves full Satisfaction. This, I am sensible, is a very nice and tender Point; and the Difficulties of it do arise from these things: On one side it is said,

1. That there is an Allowance by the Law given to several Persons to hold more Benefices than one; and since the Distribution of Benefices is not by the Law of God, but by the Law of the Land, what Fault is there in making use of the Privileges which the Law gives? But there cannot be constant Residence in more Places than one.

2. That the general Service of the Church is more to be preferred than taking Care of a particular Parish; because the necessary Duties of a Parish may be supplied by persons approved by the Bishop, and
a sin.

a single Living seldom affords a sufficient Competency for persons to be capable of publick Service.

3. That the way of Subsistence for the Clergy, is now much altered from what it was when Celibacy was enjoyned: For a Competency was always supposed where Residence was strictly required; and what was a Competency to a single person, is not so to a Family.

4. That the Church hath a power of Relaxing the Severity of Ancient Canons from the different Circumstances of things; and when the general Good of the Church may be more promoted therein; as in the Removal of Clergymen from one Diocess to another, and the Translation of Bishops.

5. That the Case is now very different, as to Dispensations, from what it was in the Church of Rome, as to the Number of Benefices, and the

manner of obtaining them; that a great Restraint is laid by our Laws upon Pluralities, and our own Metropolitan is the Judge when they are fit to be granted.

But on the other side it is objected,

1. That in the first Constitution of parochial Churches, every Incumbent was bound to a strict Residence; so in the Canons of *Egbert*, *Can. 25*. Presbyters are said to be settled in those Churches, which had a House and Glebe belonging to them; and many Canons were then expressly made, That no Person should have more than one Church; and it is said in the Capitulars, that this had been several times decreed. And so it is in *Herardus* his Collection of Canons, *Can. 4* in *Isaac Lingonensis*, *Tit. 1. c. 24*. in *Chrodegangus*, *c. 67*. in

Capit. l. 6.

c. 73, 75.

Addit. 2. c. 10.

in Ivo Carnotensis, part. 3. c. 51. in Regino, l. 1. c. 254. The like we find in the Spanish Churches, Concil. Tolet. 16. c. 5. and thence in the Canon-Law, C. 10. Q. 3. c. 3. and in the Greek Churches, Concil. 7. Can. 15. C. 21. Q. 1. c. 1. And as soon as the Abuse crept in in these Western Churches, it was complained of, and endeavoured to be redressed, Concil. Paris. 6. c. 49. Concil. Aquisgran. 2. part. 2. c. 5. Concil. Metens. c. 3. That afterwards, not meerly the Mendicant Friars complained of them, as some have suggested, but some of the greatest Bishops have been zealous against them, as Gulielmus Parisiensis, Peraldus, Archbishop of Lyons, Jacobus de Vitriaco Bishop of Acon, Robert de Chorton Cardinal; Guiard Bishop of Cambray; and Gregory IX. declared, That he could only dispense with the Penalty of the Law.

After a solemn Disputation at Paris, it

Gul. Paris. de Collat. Benef. c. 6.

Perald. Sum. Vir. To. 2. de Avarit. c. 11.

Sect. 1. Cantiprat. de Apibus l. 1. c. 19. n. 5.

Hist. univers. fir. Paris. Se- cul. 5. p. 164.

it was determined against Pluralities, if one Benefice be sufficient ; and all the Divines joyned with the Bishop therein, except two ; so that it seemed to be the current Opinion of the Learned and Pious Men of that Time. *Aquinas* saith, It is a doubtful Point, but *Cajetan* is positive against them. So that all the Zeal against Pluralities, is not to be imputed to the Piques of the Friars against the Secular Clergy ; although there is no Question but they were so much the more earnest in it ; but in the Council of Trent the Bishops of Spain were the most zealous, as to the Point of Residence, and the Friars against it, as appears by *Catharinus* and others.

2. Setting aside all Authorities, the Argument in Point of Conscience, seems the strongest against Non-residence ; because persons have voluntarily undertaken the Cure of Souls within such Limits ; and although

Aquin. Quest. Quodlibet.

2. 9. Art. 15.

Caj. ad 2. 2.

q. 185. R. 5.

though the Bounds be fixed by Human Authority, yet since he hath undertaken such a Charge personally, knowing those Bounds, it lies upon his Conscience to discharge the Duties incumbent upon him, which cannot be done without constant Residence, as the Magistrates are bound in Conscience to do their Duty, although the Bounds are settled by Human Laws: And so in the case of Property, Human Laws bind so that it is a Sin to invade what is settled by them. And if it be left to a Man's Conscience, whether a Man answers his Obligation more by personal Attendance, or by a Curate; whether the Honour of Religion, and the Good of Souls be more promoted, and the Peace of his own Mind secured by one or the other, it is no hard matter to judge on which side it must go. It is impossible to defend all the Arguments used in the
old

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old Canons against Pluralities, as that Polygamy is unlawful under the Gospel: So that, as a Bishop hath but one City, and a Man but one Wife, so a Presbyter ought to have but one Church: That no Man can serve two Masters, &c. but all their Reasons were not of this sort. For, the Council of Toledo speaks home, That one

Concil. Tolet.

16. c. 5.

C. 10. 2. 3. c. 3.

Concil. Paris.

6. c. 49.

Man cannot perform his Duty to more than one Charge. To the same purpose the Sixth Council at Paris; and withal, That it brings a Scandal on the Christian Church, and an Hinderance to Publick Worship, and the Good of Souls, and savours too much of a worldly Mind; which are weighty Arguments.

The only considerable thing on the other side, is, That the Bishops are to take care that the Places be duly supplied; but whether it be done by Parson, Vicar or Curate, is not material. But this will not hold. For, (1.) the Care of Souls is committed personal-ly

ly to him that doth undertake it. And a Regard is had to the Qualifications of the Person for such a Trust, by the Patron that presents, and the Bishop who admits and institutes the Person so qualified. (2.) The old Canons were very strict as to personal Residence, so as to fix them in their Cures from which they could not go away when they pleased, which they called *Promissionem stabilitatis*. Our Saxon Canons are clear, as to the personal Cure, *Can. Egbert. 1. 4, 6. Populo sibi commissio*; and no Presbyter could leave his Cure and go to another only for Honour or Profit, *Can. 13.* And none could go from one Bishop to another, without his Diocesan's Leave, *Concil. Herudford. c. 5. Egbert. de Eccles. Instit. p. 97, 100.* And when the Bishop gives Institution, he commits the Care of Souls to the Incumbent, and not merely the Care that Divine Offices be there performed.

But

Capit. l. 5. c. 108.

Capit. l. 6. c. 200. l. 7. c. 245.

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But yet it is well observed by Aquinas, That if the having more Benefices than one were a thing evil in it self, it could in no case be dispensed with; but there are some Actions which in general are irregular, yet in some cases may be justified; especially, if they be extraordinary, as to Publick Service and Usefulness, &c.

Cajet. Sum.
V. Benef. 1.6.

In 2. 2. q. 185.
R. 5.

Filliuc. Tr. 41.
c. 7. n. 6.

And to the same purpose Cajetan speaks; but he saith, The Cases that make it lawful, must relate to a Publick, and not a Private Good; but he mentions these things which excuse from Residence; 1. Lawful Impediments, as to Health, &c. 2. Publick Service. And others say, a Geometrical Proportion ought to be observed in the Distribution of Ecclesiastical Benefices, and not an Arithmetical, i. e. A Regard ought to be had to the Merits and Capacities of Persons; as a Commander hath more Pay than many common Souldiers; but this reaches

reaches only to the Value, and not to the Number of Benefices.

But the Question still remains, Whether a Legal Dispensation take not off the Obligation in Point of Conscience, since it is allowed by Law, and the Curate appointed by the Bishop, who committed the Cure of Souls to him?

In answer to this, we must consider,

1. That the Law proposes in Dispensations very allowable Ends, as *Publick Service, Incouragement of Learning, Reward of Merit*; and therefore *Doctors by Favour* have not the Privilege which others have; and in case of *Incompetency*, as it was then judged, no Legal Dispensation was needful.

2. Some Ancient Canons took care of the Supply of the Place by competent Persons, and in that case abated the Rigour of the Canon. For

Sir-

Concil. Nanet.
c. 8.

Regino Inqui-
sit. Art. 46.
Baluz. Ap-
pend. ad Re-
gin. 604, 608,
612.

Thomassin,
Part. 3. c. 42.
n. 9.

Sirmondus saith in the Canon of the Council of Nantz against Pluralities, this Clause was added, *Unless he hath Presbyters under him to supply the Duties of his Place*: And the same Clause is in Regino, l. 1. c. 254. and Regino puts it among the Articles of Enquiry, as to the Clergy, *If any had more Churches than one without Presbyters to assist him*. And in their old Admonition to them at Visitations it is to the same purpose, but in others it is left out. Thomassin is of Opinion, That the former Enquiry related to those who had Chapels, and not to more Churches; because then there were none that had Titles upon an others Benefice; but these Words are exprefs as to more Churches. It's true, there were no such Titles then; for a Title in the old Canon Law, was the Relation which a Clergyman stood in to the Bishop of his Diocess, being one of his Clergy; and so the

Greek

Greek Canonists understand a Man's not being ordained without a Title, and not having two Churches; i. e. not to have Relation to two Dioceſſes, and ſo ſine Titulo, is without being owned by ſome Biſhop; and this was that which they thought ought to be ſtrictly obſerved; and to which purpoſe many Canons were made, both ancient and later; and if any deſerted their Biſhop, they were liable to Deprivation. Afterwards the Word, Title, came to be applied to parochial Churches; but there were ſome who found out, that the Ancient Canonis had another Senſe. Thence in the Council of Placentia in the Canon Sanctorum Diſt. 70. c. 2. it was decreed, That one might have two Churches in the ſame Dioceſs, but not two Preferments in ſeveral Cathedrals. And in the Council of Clermont, A.D. 1095. the Reaſon is given, becauſe according to the Canons no Man

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could

Can. Apoſt. 19.
Nicen. c. 16.
Antioch. 3.
Laodic. 42.
Calced. 10,
20.
Cod. Afric.
c. 54.
Crefc. Coll.
Tit. 17.
Concil. Herudf.
c. 5.
Can. Edgar. 8.
Egbert. Can.
13.
Capitul. l. 9.
c. 175.

Concil. Nant.
net. c. 8.

could have two Titles ; and every one was bound to hold to the Title to which he was first ordained. But after all, the Council of Nantz shews plainly, that more parochial Titles were then allowed, if well provided for, by such persons as the Bishop of the Diocess approved. Now this very much alters the State of the case ; for then the Obligation is *Real*, and not *Personal*.

Concil. Tolet.
16. c. 4.
C. 10. Q. 3.
c. Unio.

3. It was agreed by the Ancient Canons, That where there was an Incompetency of Maintenance, they allowed an Union for support ; now that is but the Bishop's Act in joyn- ing what had been divided, supposing a sufficient Subsistence: And a rea- sonable Distance with the Bishop's Allowance, hath the same Equity ; i. e. the Bishop's Act may unite two small Benefices for a Support, not by a perpetual Union, but so long as he sees cause, which our Law doth still

still allow, under such a Value. But it is rather a Dispensation than an Union; for the Rights continue distinct. In the Court of Rome there were Prerogative Unions *ad Vitam*, which were very scandalous, and are owned by the best Canonists to be destructive of all Order, and invented to defeat the Canons against Pluralities. But the Unions which the Law allows, are only those where two distinct Benefices are made one for a competent Subsistence; and then if the Union be reasonable, the Dispensation within due Distance is so too. Balsamon saith, In the Greek Church Pluralities are not forbidden, if they be near, and under the same Bishop; but they did not allow the same Man to be under two Bishops. In the Capitulars that Clause is added, *Addit. 2. n. 10.* That no Man shall have more Livings than one, *si Facultas suppetit*, if it affords a reasonable Subsistence.

Compegius de Union. n. 1, 8, 10, &c. Azor. p. 2. l. 6. c. 28. Flam. Paris. de Resign. l. 12. c. 3. n. 49.

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And therefore in case of Incompetency of Maintenance, of a good Provision for Curates, and of publick Service, the Severity of the Ancient Canons is with Reason abated, and a person is supposed to undertake the Cure, with those Measures which the Law and Canons allow. But every Man who regards the doing his Duty out of Conscience, will consider how much lies upon himself; and that the original Intention of the Church and Laws, was, That no Man should undertake more than he was willing and ready to discharge, as far as one Man's Abilities could go. For, in great Cities, one great Parish requires more than several Churches in the Countrey; and in such Cases an equitable Construction must be put upon such Canons, which require personal performance of these Duties.

OF

OF THE
MAINTENANCE
 OF THE
PAROCHIAL CLERGY,
 BY
LAW.

THE Subject I intend now to consider, is the Incouragement which the *Parochial Clergy* have by Law for the doing their Duties: Which are the *Manse*, the *Oblations*, and the *Tithes*.

I. The *Manse*, or *House* and *Glebe*.
 In the *Canons of Egbert* it is said,
Can. 25. That an entire Manse ought Baluz. ad
to belong to every Church, without any Capit. 1148

Q 3 other

Selden of
Tithes, p. 53.

Bignon. ad
Form. Marc.

p. 980.

Sirmond. ad

Capit. p. 768.

Lyndw. f. 44.

Extr. de Cen-
fib. c. 1.

C. 23. Q. 8.

C. 24.

De Consecr.

Dist. 1. c. 9.

C. 16. Q. 7.

C. 26.

other than Ecclesiastical Service. By a
Manse, Mr. Selden saith, in the old
Charters the same is meant as a Casat
or Hyde of Land. Bignonius and Sir-
mondus say, So much Glebe as was an
Imployment for an Husbandman and
two Servants. Spelman saith, It takes in
the House too. Lyndwood saith, As much
Land as would Imploy a Yoke of Oxen;
and so the Gloss on the Canon Law.
But in another place the Gloss saith,
The Manse is the original Endowment
of the Church, without which it cannot
be supplied; and without which it
could not be consecrated. For the
Endowment was first to be produ-
ced before the Building, *collatâ primi-*
tus donatione solenni, are the Words
of the Canon Law. And the same
appears by Concil. Valent. 3. c. 9. Con-
cil. Bracar. 2. c. 5. Vit. Udalrici c. 7.
Regino l. 1. c. 23, 24. which is there
explained to be a substantial Suste-
nance for those who were to attend the
Service

Service of that Church. And in the Acts of Consecration of a parochial Church in *Baluzius*, the Bishop in the first place declares himself satisfied with the Endowment, *unde dignè domus Dei sustentaretur*. And upon this the Original Right of Patronage was founded, not upon the Soil, which gave no Title, where there was not a Church built and endowed with a competent Subsistence. *Ent. de Eccl. edific. c. ad Audientium.* So that all Advowsons or Rights of Presentation in private Patrons, were at first Appendant to Manors, and not in Gross; because the Right came from the Endowment out of the Manor: And the Name of Patron in the Sense of the Feudal Law, is the same with Lord of the Fee, and so Beneficium is a Feudal Term; and till the Feudal Law prevailed, the Name of Patron is rarely used in this Sense. And when it came to be used, the Patrons in France would have brought those

Seld. 85, 86.

F. 89.

those who had their *Benefices* to a kind of *Feudal Service*, and to have received *Investiture* from them. This Mr. Selden drives at, as though the *Patrons* had the Right of *Investiture* belonging to them, because some such Practice is often complained of in the *French Canons*, and as often condemned, not meerly by Ecclesiastical Canons, but by as good Laws as any were then made. It cannot be denied that bad Practices are the Occasion of making good Laws; but doth it follow that those Practices which were against Law, were the Law of that time? Yet this is Mr. Selden's way of Arguing; he grants, *That there were Laws made, but they were little obeyed.* Must we therefore conclude those illegal Practices to have been the standing Law, and the Laws themselves to be illegal? There were two things aimed at by those *Patrons*. 1. To keep the Cler-

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gy in a sole Dependance on themselves, without Regard to the Bishop's Authority. 2. To make such Bargains with them as they thought fit. Both these were thought necessary to be redressed by Laws, since the Canons were slighted by them. And if the Practice be good against Law in one case, why not in the other also? Why is not *Simony* justified, as well as the Patron's absolute Power over the Incumbents? but the Laws were severe against both. For in the time of *Lud. Pius*, A. D. 816. there was a solemn Assembly of the Estates of the Empire, where several Ecclesiastical Laws were passed, and among the rest, these two: 1. *That no Presbyters should be put in, or put out of Churches, without the Authority and Consent of the Bishops; and that the Bishops should not refuse those who were presented, if they were probabilis Vitæ & Doctrinæ, i. e.* such

Capit. 816.

c. 9.

Capit. 1, 84,

141.

such as the Bishops could not object against either for Life or Learning. 2. That every Church should have an entire Manse belonging to it, free from any Feudal Service; but if they had other Estates of their own, for them they were to answer to the Lords of the Manor, as others did. And from hence this came into the Collections of Ivo, Regino, Burchardus, and Gratian, and passed for a Law generally received. As to the former, a new Sanction was added to it in another Assembly at Worms, A. D. 829. c. 1. and repeated in the Capitulars, l. 5. c. 98. *Addit.* 4. c. 95. and the like as to the latter, l. 5. c. 100. *Capit. A.* 829. c. 4.

But it seems there were some still continued obstinate in their former Practices, and therefore these Laws were reinforced in another Assembly, A. D. 869. in the time of *Carolus Calvus*, who mentions the Laws of his

Ivo p. 3. c. 55.

174.

Regino l. 1.

c. 24.

Burch. l. 3.

c. 52.

C. 23. q. 8.

c. 24. 25.

his Father and Grandfather to the same purpose, c. 9. and there takes notice of the Contrivances made use of to defeat the Intention of those Laws; and the bottom of all is there said to be *abominable Simony*. Which shews, what it was which these Patrons aimed at, by claiming *Investiture* without the Bishop. And it was then judged necessary, that the Bishop's Consent was required to prevent this Mischief. But still some Patrons required *Feudal Service* for the Glebe they had given to the Church; but the Law commands them to restore it free from such Service, *Capit. l. 5. c. 100. Addit. l. 4. c. 98, 163*. And after much struggling, *Hincmarus*, who lived at that time, saith, *That these Laws were observed. The Patron's Right by Virtue of the Endowment, was not disputed; but an Arbitrary Power, as to the Incumbents, was utterly denied them; and they were put under*

*Concil. Labb.
T. 8. p. 1815.*

der the Bishop's Care, who was to receive Complaints against them, and to proceed according to the Churches Canons. But I am apt to think that all this stir in France did not arise from the pretence of Original Donation and Endowment of Churches, but from the Infeodation of Church Lands and Titles, by Charles

Filefaci Opus.
p. 846, &c.

Fragment. de
Majoribus
Pal.
Du Chesn.
T. 1.

Capit. l. 1.
157.

Regin. l. 1.
43, 45, 46, 47.

Martel (as an old MS. in *Filefacus* saith) and others in France, whose Custom it was to give them in Recompence to their Souldiers, who then looked on them as their own, and were hardly brought to any reasonable Allowance for the Clergy which supplied them. These were called *Beneficia* in the *Capitulars*, and they were to pay *Nona* & *Decima*, i. e. a Fifth Part out of them, which was obtained with much Difficulty, as appears by the many Laws made about them. In the Council at *Lep- tins*, A. D. 743. *Carolomannus*, son to Charles

Charles Martel, owns the letting out some of the Church Lands *sub Precario & Censu*, upon a reserved Rent, *Can. 2. Capit. l. 5. c. 3.* but then it was barely for Life. But the consequence was, That it was very hard to recover either the Lands or the reserved Rents, and they put in Clergymen, and put them out as they pleased, because they held these Lands as Beneficiary Tenures from the Crown. So that it was the Work of more than an Age to put the Church there in any tolerable Condition. But this seems to be very much mistaken, when it is brought to prove the Right of Patronage from the Endowment, as to the Disposal of Benefices.

But the Right of Patronage by the first building and endowing the Church, is owned by the Civil Law in *Justinian's Novels, 123. c. 18.* and Two Things were there required;
1. A sufficient Maintenance for the Clergy

Clergy who were nominated. 2. The Bishop's Satisfaction as to their Fitness; about which he speaks in another Novel, 56. Tit. 12. c. 2. And he elsewhere requires, that before any Churches were built, the Bishop should see that there were sufficient Maintenance for those who were to officiate, Novel, 66. Tit. 22.

The same Right obtained here upon the same Grounds, as appears by the Barons Answer to Gregory IX. who affirm, That they had it ever since Christianity was founded here. They mean, ever since parochial Churches were endowed by their Ancestors; for there could be no such Right of Patronage before. And such Patrons were here called *Advocati Ecclesie*, as appears by Joh. Sarisbur. Ep. 6. 119. and the *Jus Advocatationis*, as our Lawyers tell us, is a Right which a Person hath to present to a vacant Benefice in his own Name;

1 Dist. 17. b.

Name; which is agreeable to what *Brañton* and *Fleta* had said long before.

But it doth not appear by them how the Names of *Patron* and *Advocate* came to be so applied. Among the *Romans*, saith *Asconius Pedianus*, the *Patron* was he that pleaded the cause of another; the *Advocate*, he that appeared in Court on his behalf. But this doth not reach to the *Jus Advocationis* which we are now about. In the Ninety seventh Canon of the *African Code*, an Allowance is made for the Churches to have *Advocates* to solícite their Causes at Court. From hence the greater Churches and Monasteries had their proper *Advocates* appointed them by the King, as *Bignonius* observes; and in the old Charters of *Aub. Miræus*, several such *Advocates* are appointed; and it appears to have been an honorary Title, and great

Capit. l. 7. c. 392.

Bignon. in Marculph. l. 1. c. 21.

*Aub. Miræ.
Cod. Donat.
l. 1. c. 136.*

*P. Roverii
Reomaus,
p. 614.*

*De Foro Com-
pet. f. 50.
C. 56. q. 7.
n. 32.*

great Men were pleased with it. *Miræus* saith, it was accounted a considerable Honour at that time. And so by degrees the Founders of Parochial Churches came to have the Title of *Patrons* and *Advocates* of them; and the Right they enjoyed, the Right of *Advowson* as well as *Patronage* (not as some ridiculously talk of *Advocat se*, or *Advocat alium*) because the Trust and Care of those Churches, endowed by their Ancestors, was fallen to them, and they were bound to look after, and to defend the Rights of them; and so *Lyndwood* explains it.

II. The next thing to be considered, is the *Oblations* of the People, which in those elder times were so free and large, that (which may seem incredible now) there were Persons who would build Churches on their own Land to have a Share

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in the Oblations, as is affirmed in one of the Spanish Councils, and there forbidden with great Severity. Concil. Brac. 3. c. 6.

It was not, as the *Gloss* on the Canon Law understands it, to make a Bargain for the Right of Patronage, but it is expressed to have an equal Share with the Clergy in the Oblations of the People. De Consecr. 1. c. 10.

It is observed by *Agabardus*, That the Devotion of Persons in the first Ages was so great, that there was no need to make Laws or Canons for the Supplies of Churches, since they were so amply provided for by the Liberality of the People. Thence we read of the *Deposita pietatis* in *Tertullian*, which were voluntary Oblations; and out of which were made *Divisiones Mensurnæ* in *S. Cyprian*, and the *Sportule*, which were the Allowances made to the Clergy out of the common Stock; and they who received them, and not those who gave them (as Mr.

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Selden

Ep. 66.

Ep. 64.

Selden fancies) were called *Sportulantes Fratres*; and the Allowances were then stiled *Stipes & Oblationes*, which were so considerable, that St. Cyprian blamed some for their setting their Hearts too much upon them; *Stipes, Oblationes, Lucra desiderant, quibus prius insatiabiles incubabant*; which could not be said of any meer necessary Subsistence; these they received *tanquam Decimas ex fructibus*, as St. Cyprian speaks, in lieu of Tithes at that time, when the most of the Christian Church inhabited the Cities, and gave out of their Stock to maintain the Church, and those who attended upon the Service of it. But when Christianity came to spread into the Countries, then a more fixed and settled Maintenance was required, but so as to retain somewhat of the Ancient Custom in *voluntary Oblations*.

No

No sooner was Christianity settled in France, but we read of Lands given to the Church by Clodoveus after his Conversion; these are owned by the first Council of Orleans called in his time, A. D. 511. and were put into the Bishop's Hands, and to be distributed by him for Repairs of Churches, Maintenance of the Clergy, and other pious Uses, Can. 5. 14, 15. But besides these, we read still of Oblations made by the people on the Altar, both in the Mother-Church, and in Parochial Churches. If in the Mother-Church one Moiety went to the Bishop, the other to the Clergy; if in the other, only the third Part to the Bishop.

In the second Council of Mascon, Can. 4. we find it required, That all the People make an Oblation of Bread and Wine at the Altar; and this was A. D. 585. but besides, the next Canon insists on the Payment of Tithes, as founded on the Law of God, and

Selden of
Tithes, c. 5.
n. 5. p. 58.

the *Ancient Custom of the Church*, which is thereby reinforced; *unde statuimus & decernimus ut mos antiquus reparatur*; which Words are not fairly left out by Mr. Selden, because they shew that there was only in this Canon *a renewing of an Ancient Custom*, which had obtained, but was now growing into Disuse. For this Council of *Mascon* was called on purpose to restore what they found too much declining, as to Religion; and they begin with the Observation of the Lord's Day, and after, add this, wherein they complain of the *Neglect of that which their Predecessors observed, as founded on the Law of God*. So that there can be no doubt of the Custom of paying Tithes in *France*, from the time of receiving Christianity; and that this Custom declined as their Religion did. In the Council of *Nantz*, about A. D. 658. Oblations and Tithes are mentioned

tioned together, c. 10. as making up the Churches Stock, which was to be divided into Four Parts, to the Bishop, and to the Clergy, and to Repairs, and to the Poor.

But besides the Oblations of the Living, it was then common to make *Oblations* at their Death; and these were called *Oblationes defunctorum*, and severe Canons were made against the Detainers of them, *Concil. Vas. I. c. 4. Agath. c. 4, 13. Q. 2, 9, 10, 11.* And so much appears by those Canons which forbid Exactions at Funerals, *Concil. Tribur. c. 16. Nannet. c. 6.* where an Exception is made as to voluntary Gifts, either by the Parties deceased, or by the Executors. But here, in the Saxon times there was a Funeral Duty to be paid, called *Pecunia sepulchralis* & *Symbolum Animæ*, and a Saxon Sout-shot; this is required by the Council at *Enham*, and enforced by the Laws

Spelm. Con. P. 517.

Glanvil. l. 7.
c. 5.

of *Canutus*, c. 14. and was due to the Church the Party deceased belonged to, whether he were there buried or not. Some take this for the Foundation of *Mortuaries*; but then the Money must be turned into Goods. For in *Glanvil's* time, a Freeholder is allowed to make his Will of other things, provided that he give his first best thing to his Lord, and his second to the Church. And this was not originally *pro Animâ defuncti*, as *Lyndwood* thinks, from the Modern Canonists *De Consecrat.* c. 12. but it was a Right of the Church settled on the Decease of a Member of it, as appears by the Law of *Canutus*. Others have said, That it was in lieu of Tithes subtracted, and Oblations not duly made. So *Simon Langham* in his Constitution about *Mortuaries*, which was made to explain a former Constitution of *Robert Winchelsea*, because the People were observed

not

not to pay their Tithes and Oblations as they ought. But he did not go about to settle a Right which had not been before, but to prevent Suits about that which was to be taken for a *Mortuary*; and he declares, That where there was a choice of Three or more, the Second was to be for the Mortuary, *De Sepult. f. 93, b.* So that *R. Winchelsea* supposes it to be an ancient Right. Indeed in the *Cotton MS.* of the Council of *Spelm. Concil.* *Merton*, where this Constitution is *II. P. 433.* extant, the Reason is given, That it was required by way of Compensation for the Neglect of Tithes and Oblations. In the Synod of *Winchester*, in his time, a Constitution is made for the Uniform Payment of Mortuaries in that Diocese, the second best of the Goods or Chattels was to be paid in lieu of Tithes unpaid. In *P. 453.* the Synod of *Exeter* of *Pet. Quivil*, *15 E. 1.* the Reason is given for *P. 391.*

2 Inst. 491.

the Neglect of all parochial Duties; but there it is said, That some pleaded Custom against the Payment of them, and others, as to the Manner; and although this Council endeavoured to settle an Uniform Payment, yet the Statute of *Circumspēctē agatis*, leaves the whole Matter to Custom, *ubi Mortuarium dari consuevit*. From whence my Lord Coke inferrs, That *there is no Mortuary due by Law, but only by Custom*. The true Inference was, That the contrary Custom had altered the Law from what it was in the times of *Canutus* and *Glanvil*. But that the prevailing Custom became the standing Law, as to *Mortuaries*, appears by the Statute of 21 H. 8. c. 6. which limits the Payment where the Custom continued, but allows Liberty for *Free Oblations*: And this *Free Oblation* was then called *Cors presētē*, and was distinct from the *Mortuary* in

lieu

lieu of Tithes, as appears by the Instances in Sir W. Dugdale. But I re-^{Warwick-shire, p. 470, &c.} turn to other Oblations, which Lyndwood distinguisheth into those by way of Gift, and such as became due. For these latter, he insists on c. *Omnis christianus* in the Canon Law, *De Consecr. D. 1. c. 69.* which requires that every one who approaches the Altar, make some Oblation. Where the Gloss saith, it is but Counsel at other times, but a Command on the Festivals. For this 16 Q. 1. c. 55. is produced, *quas populus dare debet*; but it is there interpreted of the case of Necessity: *Hostiensis* thinks all are obliged on great Festivals, and that the general Custom lays an Obligation; but *Lyndwood* thinks the Custom of particular Churches is to be observed.

In the Synod of *Exeter* before-^{Spelm. II. p. 393.} mentioned, Oblations are said to be of Divine Right, and that every Parishioner is obliged to make them; but

but the Time is limited to *Christmas, Easter, the Saints-day of the Church and the Dedication, or All-Saints.* So that four times in the Year they were required to make *Oblations* after the Age of Fourteen. And so *Giles, Bishop of Sarum, debent offerre ex debito quater in anno.*

P. 303.

In the Synod of *Winchester*, none were so obliged till Eighteen, and having Goods of their own.

P. 452.

But I observe, that in the ancient Canons here, by the *Oblations*, such things were then understood, as were for the Support of the Clergy: Thence several Canons were made against those who turned them another way. So in the Council of *London* under Archbishop *Stratford*, *Obla-*

P. 410.

P. 585.

Lyndw. f. 12.

tions are declared to belong only to *Ecclesiastical Persons.* And so *Lyndwood* saith, The Goods of the Church are called *Oblations.* And in case the *Mother Church* were appropriated,

priated, the Oblations and Obventi-
ons made in the Chapel of Ease, did *Spelm. II.*
not belong to the Convent, but to *P. 393.*
the Persons who officiated there.
These were called by the Name of the
Altarage, and were generally expres-
sed under that Name in the Endow-
ment of Vicarages; but when these
were too small for the Maintenance
of the Vicar, those small Tithes
which were joyned with them, were
comprehended under that Name;
and so it hath been resolved in the
Courts of Law upon a solemn Hear- *Spel. Gloss.*
ing. *c. Altarage.*

John de Burgo, in his *Papilla Oculi*,
speaking of Oblations, saith, That per-
sons may be bound to them four
Ways:

1. By Contract upon the Foun-
dation of the Church, which amounts
only to a Pension upon Endow-
ment.

2. By

2. By Promise either living or dying.

3. By Necessity, when the parochial Minister cannot be supported without it.

Joh. de Burgo
Pupill. Oculi,
f. 118. b.

4. By Custom, in the greater Solemnities; but he saith, the Proportion and Kind are left to Discretion; which made *Oblations* sink so low, that the parochial Clergy must have starved, if they had nothing else to support them.

Spelm. II.
495, 410.

But besides these, he mentions *Occasional Oblations* upon particular Services, as at *Marriages, Christenings, Funerals, &c.* concerning which we have several Constitutions against those who went about to hinder them, or to reduce them to a small Quantity.

Pupilla Oculi,
Part. 5. c. 21.

The *Easter-Offerings* are none of these Voluntary Oblations, but a Composition for *Personal Tithes* payable at that time; of which I may have occasion to speak more afterwards. But in the

the Saxon times here were other sorts of Oblations ; As (1) the *Cyrycſceat* or First-fruits of Corn payable at S. Martin's day, Ina LL. 4. 62. Edmund. c. 2. and is often mentioned in *Doomsday-book*, and in *Fleta* l. 2. c. 47. *Malmſb.* l. 2. c. 11. and the Oblation of Poultreſey at *Chriſtmas* is mentioned in *Doomsday*, under that Title. (2.) There was here another kind of Oblation called *Plow-Alms*, which was a Penſy for every Plow between *Eaſter* and *Whitſontide*. This is mentioned in the Laws of King *Ethelred*, *Spel. Conell. X.* 517, 527. and required to be paid Fifteen days after *Eaſter*, although it be called *Eleemoſyna Aratralis*. In the Endowment of the Vicarage of S. *Ives*, *Plow-Alms* is mentioned beſides the *Altarage* *Mon. I. 256.* and *Obventions*.

But all theſe Oblations made a very poor Subſiſtence for the Parochial Clergy.

III. And

III. And therefore I come to the main Legal Support of the Parochial Clergy, which is in Tithes. Concerning which I shall proceed in this Method;

I. To consider the Foundation in Law which they stand upon.

II. The Rules of Law which are to be observed about them.

L. Inst. 642.

I. As to the Foundation they stand upon in point of Law. My Lord Coke not only saith, That the Parochial Right of Tithes is established by divers Acts of Parliament; but he mentions the Saxon Laws before the Conquest for the Payment of Tithes of Edward and Gathrun, Ethelstan, Edmund, Edgar, Canutus, and King Edward's, confirmed by William I. Hobart saith, That Tithes are things of common Right, and do of Right belong to the Church. And since Parishes were erected, they
are

Hob. R. 296.

are due to the Parson (except in spiritual regular Cases) or Vicar of the Parish.

In the Register of Writs, a Book of great Authority, there is a Writ of Consultation for Tithes, wherein they are owned to be of common Right, as well as immemorial Custom, due to the Rector. within the Limits of his Parish. *Regist. f. 48.*

Lord Chief Justice Dyer saith, That Tithes can never be extinguished, because they are of common Right. *Moor f. 50.*

The same is affirmed by Justice Dodderidge in the Case of Fosse and Parker. *Bustrod. 3. 243.*

In Pieddle and Napper's Case, Tithes are said to be an Ecclesiastical Inheritance collateral to the Estate in Land, and of their own Nature due to an Ecclesiastical Person: And, That all Lands of common Right are to pay Tithes. Therefore it is said by Hobart in Slade's Case, *11 R. 13. Hob. 298. 44.*
That

That no Land can be discharged of Tithes, although it may be discharged of the actual Payment.

Rolls R. 2.

174.

Poph. R. 156.

In Popham's Reports we read, That it is a Maxim in Law, that all Persons ought to pay Tithes, and all Lands shall be charged with them of common Right. So that if the Judgment of some of the greatest Men of the Profession may be taken, nothing can be more clear and evident than the Legal Right of Tithes. But it falls out unhappily among us, that nothing hath been the Occasion of so much Difference and Contention between the Incumbents and their Parishioners, than the Point of the Payment of Tithes. So that some have wished them changed into some other way of Maintenance; but I cannot see any Reason why so ancient, so legal, so just a Maintenance should be changed into any other, which would less answer the End,

and

and be liable to as many Difficulties, if not far more; but every Change of this kind, where we cannot be secured of the Event, is very dangerous, especially when it proceeds from Want of Judgment or Ill-will to the Profession; both which are to be suspected in this case. If the ill Humours of some People could be changed, it would signify far more to the Quiet of the Clergy, than altering their legal Maintenance.

Therefore the best way is to enquire into the Reasons of this Dissatisfaction, that we may find out the proper Methods to remove it, and thereby to prevent the troublesome and vexatious Suits about them, which make the parochial Clergy so uneasie; and their Labour often unsuccessful with the People.

And there is a twofold Dissatisfaction which lies at the bottom of most of these Contentions about Tithes.

S

I. In

1. In Point of Conscience.
2. In Point of Law.

1. In Point of Conscience. There is a sort of People among us, who are very obstinate in this Matter, and will rather chuse to go to Prison and lie there, than pay their Tithes. I have often thought whence such a Stiffness should arise in a matter of Legal Right. If they had opposed all Determinations of Property by Law, they had been more consistent with themselves; but to allow the Law to determine the Right as to Nine Parts, and not as to the Tenth, is not to be reconciled. For if the Question be concerning the other parts, to whom they do belong, may not Men as well dispute the matter of Dominion and Property in them? May they not say, that the Seed is our own, and the Labour and Char-
ges

ges our own; why then shall I answer to another for the Profit which arises from my Pains and Expence? If it be replied, That the Law hath given the Property of the Land to one, and the Use to another, why may they not pretend this to be an unreasonable Law to separate one from the other, since Land was given for the Use; and the Original Right of Dominion was from what was necessary for Use; therefore the separating Right and Use, is an Incroachment on the Natural Rights of Mankind. And there seems to be more Colour for this, than for any to allow the Laws to determine the Right of Nine Parts to belong to the Lord of the Soil, but the Tenth by no means to go that way, which the Law of the Land hath long since determined it. So that the Lord of the Soil either by Descent or Purchase, can claim no Right to

it; for neither did his Ancestors enjoy it, nor those who sold the Land to a Purchaser consider it as his own, for then he would have had the Value of it. The Tenth Part then is set aside in Valuation of Estates, as already disposed of; and the Question is, Whether the same Law which settled the Right to the other, shall determine this likewise? Is it not a part of natural Injustice to detain that which by Law belongs to another? And is not the Law the Measure of Right in Cases of Difference between Man and Man; Why then should not the Law fairly and equally determine this matter, to whom the Tenth of the Profits belongs?

But still they say, *It is against their Conscience, and they cannot do it.* Is it against their Conscience to do Acts of Natural Justice, not to detain that from another, which of Right belongs

belongs to him? But it is in vain to argue with people, who do not judge of things by the common light of Reason and Justice, but by an unaccountable Light within them, which none can judge of but themselves; and in matter of Interest Men are the worst Judges in their own Case.

2. Therefore I come to those who are capable of being argued with; such, I mean, who are unsatisfied in the Point of Law, not in general, but in particular Cases, from whence Suits arise, and those are often from these Causes:

1. Not duly considering the just Measure and Extent of the Rules of Law for the Payment of Tithes.

2. Not attending to the Exemptions, or Discharges by Law from the Payment of Tithes.

The best way I know to prevent troublesome Suits about Tithes, is to

S 3 enquire

enquire diligently into these two Things:

1. The Rules of Law for the Payment of Tithes. One might have justly expected, that in a matter of common Right and daily Practice, and wherein the Peace and Quiet of the People is so much concerned, as well as of the Clergy, the Rules of Law should have been plain, and clear, and liable to as few Exceptions as possible; but instead of this, there is not one general Rule in this matter, but hath several Exceptions; and different Opinions have been about them by the great Men of the Law, which hath given too much occasion to the Multitudes of Suits which have been in the matter of Tithes; so that the Clergy are not so much to blame, if they are unavoidably involved in Suits by the Perplexity of the Law, and the different Resolutions which have been made about

about the Cases reported by them.

This I shall make appear by examining some of the most general Rules of Law, and comparing them with the Resolutions which have been made in particular Cases.

1. One of the most standing Rules of the Law, is, That *Tithes are only to be paid of things which do annually increase, ex annuatis renovantibus simul & semel.* Law of Tithes, c. 12. p. 214.

But is this Rule allowed in all Cases?

1. From hence *Coke* concludes, That no *Tithes* are to be paid of Minerals, or of what is of the Substance of the Earth; and so Stone, Turff, Timn, Lead, Coals, Chalk, Pots of Earth, are denied to be titheable. But I find, 5 H. 4. n. 65. a Petition of the Commons was denied about being sued in the Ecclesiastical Courts for Tithes of Stone and Slat taken out of their Quarries. The Petition was renewed, 8 H. 4.

and then the King's Answer was,
 That the former Custom should continue.
 And so about Tithes for Sea-Coals,
 51 E. 3. n. 57. From whence it ap-
 pears, that these things might be
 tithed by ancient Custom, and that
 was not thought fit to be altered.
 But, 34 Eliz. it was resolved in the
 Kings-Bench, That no Tithes are due
 of Quarries of Slat or Stone, in the
 Case of Lysle and Wats. Here was
 no Regard to Custom, and a Rea-
 son is given, which deserves to be
 considered, viz. That he may have
 Tithes of the Grass or Corn which groweth
 upon the Surface of the Land where
 the Quarry is. But how if there be
 none? As Lands where Quarries are,
 seldom afford Tithes. But the Note
 on the Register saith, That if Corn
 do grow there, Tithe of it would be due
 however. So that here we have a
 Rule against an ancient Custom and
 Rule too. But it cannot be denied,
 that

Moor 908.

C. El. 277.

Reg. 54. 2.

that Fitz-Herbert and Brook say, That <sup>F. N. B. 53.
B. 241.</sup> there is no Tithe of Quarries, or Coals, or such things; and it was so adjudged, 11 Jac. and 14 Jac. and in other Cases since. And yet after all, Rolls <sup>Rolls 637.
March 58.</sup> yields, That a Custom in these cases is to be allowed; so that the general Rule is to be understood so, as there be no Custom to the contrary. And as to Minerals, it is determined by a late Writer, That by Custom <sup>Law of Tithes,
214.</sup> Tithes may be due of them, although they do not annually increase. And my Lord Coke mentions King John's <sup>4 Inst. 232.
1 Rolls, 637.</sup> Grant to the Bishop of Exeter of the Tithe of his Tunn-Farm. And a good Author assures us, That in Places of <sup>Cosin's Apot.
p. 38.</sup> Lead-Mines, the Tithe of Lead is the chief Part of the Ministers Maintenance. Therefore my Lord Coke concludes his Discourse of Tithes with this general Rule, That by Custom a Parson may have Tithes of such things as are ^{2 Inst. 664.} not titheable of common Right.

2. From

21 R. 15, 16.
Rolls 1. 636.

2. From hence it is concluded, That no Tithe can be due for Houses, because they have no annual Increase. This was solemnly debated in Dr. Grant's Case, 11 Jac. and that there was no Tithe due, was proved by the Counsel from the Register, Fitz-H. N. B. Brook, &c. But it was resolved by the Court, That although Houses of themselves were not tithable, yet there might be a *Modus decimandi* on the Ground on which the Houses stood, and the Houses did not take away the Right before; and in most ancient Cities and Burroughs there was such a *Modus* for the Maintenance of their Minister. I grant that there was a certain *Modus decimandi* upon Houses, but not upon the Account of the Ground they stood upon; but there was a customary Duty upon Houses in lieu of Tithes, and were accounted a sort of *Prædial Tithes*, although they were called

called Oblationes de Domibus, as Lynd-^{Lyndw. de}
wood saith, and were distinct from ^{Decimis.}
Personal Tithes, for the Jews were ^{c. Sanct.}
bound to pay Tithes of Houses, ^{c. Negotiat.}
but not personal. Such was the
Rate on Houses in London: But in
Dr. Layfield's Case it was denied, ^{Selden of}
that there could be a Prescription of ^{Tithes, 244}
Tithes upon Houses, because they are
to be paid only for the Increase of ^{Cr. Car. 596.}
things. What is now become of the
former *Modus decimandi*, when a Pre-
scription was here insisted upon and ^{Hob. 1. 11.}
denied? So that here were different
Opinions, a special Custom was al-
lowed upon good Reason; and here
a Prescription disallowed upon such
a Reason as would have overthrown
the former Custom, and yet the Law
was the same still.

3. From hence it would follow,
That if this Rule hold, things which
have not an annual Increase would
not be titheable: Then no Tithe of
Saffron

Saffron would be due, whose Heads are gathered but once in three years, nor of *Sylva cædua*, under twenty years ; and yet this was allowed in Parliament at *Sarum*, saith the *Register*, notwithstanding it was not renewed every year. And *Rolls* saith, That *Tithes* shall be paid of Beeches, Hazle, Willows, Holly, Alder, Maple, even after twenty Years, because they are not Timber. But what if Willows be used for Timber? Then *Hobart* saith, they ought to be excepted. If young Trees grow in a Nursery, and be sold, it is allowed that *Tithes* shall be paid of them, and these are not renewed every year. And what becomes now of this *General Rule*, when so many Exceptions are made to it?

4. If this Rule hold, there can be no *Tithes* of *After-pasture*, for the Rule is *simul & semel*. And my Lord *Coke* saith, It was adjudged,

8 Jac.

Regist. 49.

Rolls 1. 640.

Hob. 219.

Cr. Car. 526.

Rolls 1. 637.

Jones 416.

Hardres 381.

2 *Inst.* 652.

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8 Jac. That a Parson shall not have two Tithes of Land in one year ; and he instances in the Hay and After-pasture, &c. And yet Rolls affirms, That Rolls 1. 640. it is due by Law, unless there be a Prescription to the contrary ; and he saith, the Judgment was given upon the Prescription. And therefore he resolves it into a *Modus decimandi*. But he mentions several Judgments, that no Tithe is due for After-pasture, where Tithe-Hay hath been paid before ; which must be where there was no Custom to the contrary, or else he must contradict himself. And so *Yelverton* Yelv. 86. saith in the Case of *Green and Austen*, That of common Right, Tithe-Hay discharges the Tithe of the After-pasture. But *Crook* saith, That in that case Cr. Jac. 116. the Court went upon the Prescription, and allowed it to be good. How could it go upon both ? And Sir S. Degge is positive, that if a Meadow affords Law of Tithes, 190. c. 3. two Crops, the Parson shall have Tithe

of

of both. How can these things consist? Or what Authority may we rely upon in such Difference of Opinions?

2 Inst. 651.
Law of Tithes
c. 8.

2. Another Rule in Law is, That things which are *feræ Naturæ*, are not tithable. But here we are to seek what things are *feræ Naturæ*? Whether such things as may be tamed and kept under Custody, and become a Man's Property, are *feræ Naturæ*? Is it not Felony to steal Rabbits or Pigeons? if it be, they must be some Man's Property; and if they be a Man's proper Goods, how can they be said to be *feræ Naturæ*? For the meaning was, That no Man was to pay Tithes for that which was not his own. Are not Bees *feræ Naturæ*, as much as Pigeons and Rabbits? But the Tithe of Bees is allowed to be paid by the Tenth of the Honey and Wax. But Rolls saith, That it was doubted whether a Tenth Swarm

Cr. Car. 559.
Jones, 447.
F. N. B. 51.
Rolls, 1. 651.

were

were a good Modus for the Tithe of Bees, because they are *feræ Naturæ*. The Reason is, because they are left wild, and under no Custody; but if they went into several Hives belonging to the Proprietor, they might be tithable by the Hives. And so for Pigeons under Custody in a Dove-house, they are a Man's Property, and therefore tithable: As it hath been several times resolved in Courts of Law, 14 Jac. in *Whately* and *Fanbor's Case*, in *Jones* and *Gastrill's Case*, *Rolls*, 1. 635. a Prohibition was denied; and Justice *Dodderidge* declared, to whom the Court assented, that Tithe was due both of young Pigeons and Conies. *Rolls*, R. 2. 2. But the prevailing Opinion hath been, That if they are consumed in the House, they are not tithable, but if sold, they are. But are they not *feræ Naturæ* as well when they are sold at Market, as when they are eaten at home? Why then are they tithable in one Case,

Hesley, 147.

Littleton, 3.

n. 40.

Rolls, 1. 644.

Case, and not in the other? If they are tithable at all, they are so where ever they are spent; for in tithing, the Nature of the thing is to be considered, and not the Place of spending it. For upon the same Reason there would be no Tithes of Corn spent at home, or Pigs, Calves, &c. and therefore I look on the Reason as of worse Consequence, than the total denying the Payment. For who can tell how far this Reason may be carried in other Cases?

March, 56.

Hetley, 13.

Rolls, 1. 635,

636.

Palmer, 527.

Cr. Car. 264,

339.

Lyndw. 101.

Spel. II. 503.

But it is resolved in many Cases, that though they are *fera Naturæ*, yet by Custom they may be tithed; and so for Fish. Custom it seems hath the Power of reducing things *fera Naturæ* to the same Condition with other things. But as far as I can find, these things by our old Constitutions, were as tithable as other things; but the notion of their being *fera Naturæ* being started, served as a Plea against

against them, where the Custom was not continued; and where it was beyond all Dispute, then they said, they were not tithable in themselves, but only by Custom; or not by Law, but by Custom; and yet such Customs make a part of our Law.

Hardr. 188.
Kebbl. 2. 452.
1 Inst. 115, 6.
244.

In several ancient Appropriations, Fish, and Pigeons, and Rabbets are expressly mentioned, as given together with other Tithes; so that in those times both Law and Custom went together. For the Lords of Manors were not wont to give Tithes which were not otherwise due.

Monast. I.
577.
646.
1602.

II. 4. 698.

3. But what is to be done with those Lands which might afford Tithe, if the Increase of Grass were suffered but the Owners feed Cattel upon it, and so there can be no Tithes, what Remedy doth the Law afford in this case?

T

I. It

Lynd. f. 99.

F. N. B. 53.

2 Inst. 651.

1. It is agreed that no Tithe is due, if no other Cattel be fed, but such as the Owner pays Tithe for, or are employed in plowing, or any other way which is for the Benefit of the Incumbent of that Parish where they are fed. For otherwise they are but as barren Cattel to him.

2. That there is a certain Rate due for the Agistment of barren Cattel, *jure communi*, and so delivered by *Hales* then Chief Baron, according to the Value of the Land, unless Custom hath determined otherwise. And so for Guest-Horses, &c. unless the Inn-keeper had paid Tithe-Hay, say some, or the Custom be otherwise: But none for *Saddle-Horses* for the Use of the Owner. One of the Judges dissenting, because not intended for Husbandry. But for unprofitable Cattel the tenth part of the Bargain is due, or according to the Value of the Land, and the Owner

Popl. 142.

Rolls, 1. 641.

650.

Bulst. 1. 171.

Rolls, 1. 641.

Popl. 126,

197.

of the Cattel is compellable to pay. *Hardr. 184.*

3. If profitable and unprofitable be mixed, so as the latter be the greater Number, then Herbage must be paid for them, and Tithe in kind for the profitable; but if the profitable be the greater Number, it is questioned whether the other are not excused; but no Law or Precedent is produced for it: And there seems to be no Reason, if Pasturage be due for unprofitable Cattel, why they should be excused because there are more profitable, unless their Number be inconsiderable. *Law of Tithes 200.*

These things I have only briefly touched at, that you may the better govern your selves in Disputes of this Nature; and as you are not to lose the just Rights of the Church, so neither is it for your Interest or Honour to be engaged in them, where the Law will not bear you out.

II. The next thing necessary to be considered, is, the legal Discharges from the Payment of *Tithes*. For, although the Reason of the Payment of them be founded on the Law of God, and the Settlement of *Tithes* among us hath been by ancient and unquestionable Laws of the Land, yet the Recovery of *Tithes* when unjustly detained, can be no otherwise than by the Law of the Land, as it is now in force. And if these do allow several Discharges and Exemptions not to be found in the ancient Laws or Practice, we shall but involve our selves in fruitless Contentions, if we dispute those Limitations which the Law hath put upon the Payment of *Tithes*. And therefore our Business is to enquire and satisfy our selves, as well as we can, about the Nature and Extent of these Limitations.

Now

Now there are four sorts of Discharges of the Payment of Tithes allowed.

1. By Appropriations to Monasteries.
2. By Privileges of particular Orders.
3. By Prescription and real Compositions.
4. By Unity and Possession.

Of these I shall discourse in order, so as to clear the greatest Difficulties, with respect to them.

1. As to *Appropriations*. By the Statute of Dissolution, 31 H. 8. 13. the new Possessors are to enjoy their Parsonages appropriated, Tithes, Pen- sions, and Portions, and all other Lands belonging to them, discharged and acquitted of the Payment of Tithes, as freely, and in as ample a

manner as they were enjoyed before.

32 *H. 8.* 7. It is Enacted, That no persons shall be compelled, or otherwise sued to yield, give or pay any manner of Tithes for any Mannors, Lands, Tenements, or other Hereditaments, which by Laws or Statutes of this Realm are discharged, or not chargeable with the payment of any such Tithes. So that we must enquire into the State of Parsonages appropriated before the Dissolution, and how the payment of Tithes stood then.

I will not deny that there were Churches appropriated to Monasteries in the *Saxon* times; but if *Mr. Selden's Doctrine* hold good, as to the *Arbitrary Consecration of Tithes till the Twelfth Century*, those Churches cannot carry the Tithes along with them, but only such Glebe and Oblations as belonged to them. For how could
the

the Tithes pass with the Churches, if they were not then annexed to them?

But he confesses, *That the mention of* Hist. of Tithes, 37^o.

Tithes with Churches in Appropriations, was rare, or not at all till after the

Normans. The Reason might be, that the Separation of Tithes from the Churches, was not known till

the *Norman* times. For the *Norman* Nobility took little notice of the

Saxon Laws about Tithes; but finding Tithes paid out of the Lands

within their Manors, they thought they did well, if they gave the whole

Tithes, or a Portion and Share of them, as they thought fit, to some

Monastery either abroad or at home. And this I take to be the true Account

of the beginning of Appropriations among us. It were endless to give

an Account of the Appropriations made by the *Normans*, for the *Mo-*

nasticon is full of them. *William I.*

gave several Churches with their

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Tithes to *Battle-Abbey*. *William Rufus* added more. *H. 1.* to the Monastery of *Reading*, several Churches in like-manner; and *H. 2.* more. *Hugh* Earl of *Chester*, gave the Tithes of several Manors to the Monastery of *St. Werburg*, in the time of *William I.* Of which kind the Instances are too many to be mentioned; instead thereof, I shall set down the State of the parochial Clergy under these Appropriations, which was very mean, and intended so to be, being supplied by the *English* Clergy.

1. Where the Churches and Tithes were appropriated to a Monastery, the Vicar had only such a Competency as the Bishop thought fit to allow, till Vicarages came to be endowed; For right understanding this matter of Appropriations, as it stood here in *England*, these things are to be considered,

1, That

1. That there was a parochial Right of Tithes settled in the Saxon times: Which I infer from the Laws of *Edgar* and *Canutus*, where the Tithes are required to be paid to the Mother-Church; and if the Lord of a Manor have a Church on his own Free-land, he may retain a third part of the Tithes for the Use of it. L.L. Saxon. Wb. p. 62. Spelm. Concil. 444. L.L. Canut. c. 8, 10, 11. These Laws are so plain and clear, that Mr. *Selden* does not deny them; Seld. of Tithes, P. 262. and he confesses, *the first Limitation of Profits to be contained in them.* But what is to be understood by the Mother-Church to which the Tithes were given? Mr. *Selden* would have it the Monastery or Mother-Church; but afterwards he grants, *That a Parochial Right to Incumbents was hereby settled;* Which is the first legal Settlement of Tithes in a parochial Manner: But these Laws of *Edgar* and *Canutus* were so solemnly Enacted, that, as Mr. *Selden* observes, they were particular- P. 264.
ly P. 223.

2 R. 44.

2 Inst. 641.

Dyer, 84.

Brook, 241.

Cr. Car. 422.

Palmer, 220.

Selden, 293.

Lyndw. 81. b.

Selden, 404.

ly called, *Leges Anglica*, the old *English Laws* in the old *Latin MSS.* It is a commonly received Opinion among the Lawyers of the best Rank, That before the Lateran Council there was no Parochial Settlement of Tithes here. My Lord Coke found no such Decree of the Lateran Council under *Alexander 3. 5 H. 2. A. D. 1179.* and therefore he refers it to a Decretal of *Innocent 3.* As to the *Lateran Council* which *Lyndwood* mentions, it plainly speaks of *Feudal Tithes*, which a person enjoyed by the Churches Grant, and such might before that Council, be given to what Church the person pleased. But is there no Difference between *Feudal* and *Parochial Tithes*? And what Proof is there of any Ancient Infeodations of Tithes here? Mr. *Selden* himself thinks *Lyndwood* applies the Custom of other Countries to his own. But as to the parochial Right of Tithes

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Tithes among us, it stands thus: By the *Saxon* Laws the parochial was settled. After the *Norman* Invasion these Laws were neglected and slighted by the *Normans*; *H. I.* by his Charter restored them, *H. 1. c. 11.* and the very Words of the Laws of *Edgar* and *Canutus* are repeated. The *Normans* went on notwithstanding, and so these Laws were discontinued in Practice. But *Hadrian 4.* who was an *Englishman* by Birth, observing the disorderly Payments of Tithes here, published a Constitution to require the parochial Payment of them, as is observed by *P. Pithæus*, a very learned and impartial Man. After him *Alexander 3.* in a Decretal directed to the Archbishop of *Canterbury* and his Suffragans, complains, *That whereas the Parishioners had formerly paid their Tithes entirely where they ought to pay them, the contrary Custom had obtained; and some withdrew*

Not, in Decret. l. 3. c. 30. n. 4.

the

Of the Duties and Rights

the Tithe of Wooll, Fish, and Mills; therefore he requires the strict Payment of them to the Churches to which they were due. The latter part only is in the Canon Law, but the former is added from the Ancient Copies by Pitheus.

Innocent. 3.
Epist. 2.
c. 114.

As to the Decretal of Innocent III. to which my Lord Coke refers, and Mr. Selden thinks was mistaken for the Lateran Council, being brought into England with it; there is such an Epistle extant in the Collection of his Epistles, but not put into the Canon Law, and was nothing but an Enforcement of the former Laws, and a declaring the contrary Custom void, which had too much obtained since the Norman times. But in a Decretal extant in the Canon Law, *De Decim. c. 29.* he acknowledges the parochial payment of Tithes to be due by common Right, *Cum perceptio Decimarum ad Paræciales Ecclesias de Jure*

Jure communi pertineat. Can any thing be plainer than that the parochial Right could not depend upon his Decretal Epistle, when himself confesses that they were due by common Right?

We do not deny that he enforced the payment which had been so grossly neglected in the Norman times, and the most they would be brought to in many places, was to pay only a third part to the Parish-Priest who officiated, and gave the rest to Monasteries, and often appropriated the whole Tithes to them, either at home or abroad, as will abundantly appear by the *Monasticon*; from whence it is plain, that they looked on Tithes in general, as due to the Church, as appears by very many of their Ancient Charters; but they thought they did very well when they appropriated them to Monasteries of their own Erection, or others, as they thought

Monast. I.
112, 114,
201, 202,
327, 399,
436.
II. 50, 81.

thought fit. But this Humour took so much among the *Norman Nobility*, and served so many Purposes of Honour and Devotion, as they thought (besides Reason of State) that the parochial Clergy were reduced to so poor a Condition, that *Alexander IV.* complained of it as *the Bane of Religion, and Destruction of the Church, and as a Poison which had spread over the whole Nation.* And it must be very scandalous indeed, when the Pope complained of it: For the Monks that were able, generally got their *Appropriations* confirmed in the Court of *Rome.*

2. There was a Competency to be settled on the parochial Clergy by the Bishops Consent, which was required in order to the confirming an Appropriation; as may be seen in Multitudes of them in the *Monasticon*, besides those which are preserved in the Churches Registers. Sometimes

Du Fresn.
c. Appropri.

Monast. I.
369, 399.
II. 58, 208,
656, 881.
III. 32, 36.

times the Endowment is exprest, and at other times it is reserved in the Bishop's power to do it as he sees Cause. But the Bishops were either so remiss in those Times, or the Monks so powerful at Rome, that the poor Vicars fared so hardly, that in the time of *H. 2. Alexander III.*

*Extr. de
Præb. c. De
Monachis.*

sent a Reprimand to the Bishops for favouring the Monks too much, and the Clergy too little; and therefore requires the Bishops to take care that the Vicar had a competent Subsistence, so as to be able to bear the Burden of his Place, and to keep Hospitaliry. This was directed to the Bishop of Worcester; for it seems so long since the poor Vicars here were hardly provided for. And yet I have seen several Forms of Appropriations made by the Bishops here, after the Conquest, wherein there is a two-fold *Salvo*; one for the Bishop's Right, and another for a sufficient Maintenance

nance for the Curate, although the Church were appropriated *ad communem usum Monachorum*, as of *Wolstan*, *Roger*, and of *William* in the time of *Hen. II.* when *Alexander III.* lived, and of *Walter de Grey*, *Sylvester*, &c. But it seems where a compe-

Ext. de Præb.
c. Avar.

tent Subsistence had been decreed, the Monks took the first Opportunity to lessen it; which occasioned another Decretal in the Canon Law, wherein any such thing is forbidden, without the Bishop's Consent. In other Places they pleaded Custom for it; thence came another Decree of the *Lateran Council*, to void all such Customs by whomsoever introduced, where there was not a competent Subsistence for him that served the Cure.

Extr. de Monachis, ubi sit præb.

The Monks were still refractory in this matter; and because the Bishops had Power to refuse any person presented by the Monks, unless they did consent to such a reasonable Allowance

Allowance as the Bishop thought fit; therefore they grew sullen, and would not present; in which Case another Decretal was made to give the Bishop Power to present.

*Ext. de Sup-
plend. Neglig:
Præl. Sicut
nobis.*

And after all, Clement V. *De Jure Patron. c. 1.* reinforced the former Decretals, and enjoined the Dioceans in the strictest manner, not to admit any person presented to a Cure, where the Church was appropriated, unless sufficient Allowance were made by the Bishop's Consent and Approbation, and all Custom and Privileges to the contrary are declared to be void.

But how far doth this hold among us now, since the Appropriations are become Lay-Fees, and the Bishop's Power is not mentioned in the Statute of Dissolution? To this I shall give a clear Answer, but I doubt not satisfactory, to all Parties concerned. For as Necessity and Power, so some

Mens Interest and Reason live very near one another.

1. The Statute of Dissolution leaves all matters of Right as to persons interested just as they were before. For by the Surrender the King was to have the Monasteries and Tithes in as large and ample a manner as the Abbots then had them in Right of their Houses, and in the same State and Condition as they then were, or of Right ought to have been: And so *res transit cum suo onere*. But this is not all: For there is an Express *Salvo* for all Rights, Claims, Interests, &c. of all Persons and Bodies Politick. So that if by the Law of *England* there was such an Antecedent Right in the Vicar to his Allowance, and in the Bishop to assign it, it is not taken away by this Statute, nor any other.

2. By the Law of *England* the Bishop had a Right to provide a competent

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petent Maintenance for supplying the Cure upon an Appropriation. We are told by an unquestionable Authority in point of Law, that 9 Car. 1. this Point was brought before the Kings Bench, in the Case of Thornburgh and Hitchcot. *Rolls, l. 337.* The Vicar complained, that the Church was appropriated; and that he wanted a competent Maintenance; a Prohibition was prayed, but denied upon this Reason, That the Vicar had Reason for his Suit, and that the Ordinary might compel the Impropiator to make it greater; because in all Appropriations that Power was reserved to the Ordinary. And so in the Year-Books it is allowed, *That the Ordinary may increase or diminish the Vicar's Portion, 40 E. 3. Cas. 15. f. 28.* By our Provincial Constitutions, the Bishop is to take care that the Vicar have a competent Allowance; which at that time was set

*Pro. Const.
de Offic. Vie.
c. quoniam;*

Of Tithes,
p. 153.

Miscel Parl.
183.

at Five Marks ; but *Lyndwood* observes, that as the Price of things rose, so the Allowance was increased, and in Stipendiaries it was then advanced to Eight or Ten Marks ; which, according to *Sir H. Spelman's* Computation, comes to above Sixty Pounds per Annum. But some have told us, That by some old Statutes, even benefited Persons were not by Law to have above Six Marks per Annum ; for this was the Sum allowed to Parish Priests ; which is so gross a Mistake in any that pretend to Law or Antiquity, that it is to be wondred how they could fall into it.

Birchington,
f. 42.

The Truth of the Case was this ; the parochial Chaplains or Priests were complained of, 36 E. 3. n. 23. that they could not be gotten to attend after the Plague, but at excessive Rates ; upon this a Provincial Constitution was made, extant in the Parliament Rolls, wherein they are obliged

obliged to demand no more than Six Marks. But who were these Parish-Priests? Not such as had the legal Endowments, but those who depended on the Good-Will of the Parson or People, and were hired to officiate in Chapels of Ease, or to perform Offices for the Dead, which were so frequent at that time. And these were called *Annual Chaplains*, or *Masse Chaplains*, and were distinguished from *Domestick Chaplains* who officiated in great Mens Houses in their private Oratories, and from *Beneficed Persons*, as appears by many Constitutions. But whatever was understood by the Act of Parliament then, it was repealed 21 Jac. 1. 28.

*Lyndw. f. 32.
Sacerdos Pa-
rochialis op-
posed to Bene-
ficiatus.*

Lyndw. f. 1

3. The Law of England, as to a competent Subsistence for the Vicars or Curates in appropriated Churches, is founded on very good Reason. For the *Tithes* were originally given for

the Service of the Church, and not for the Use of Monasteries. And this was a hard Point for the Monks to get over, since the *Tithes* were given for the Maintenance of the Clergy, and they were none of the Clergy, how they came to have a Right to the *Tithes*. It is certain, that the State of the Clergy and the Monastick State were different; and the Offices of the Clergy and of the Monks were inconsistent, if they held to their Rules; how then came the Monks to take the Maintenance which belonged to the Clergy for other Offices, as though they were originally intended for them? For which there is no Colour or Pretence. This Point was debated between two Great Men of their times, *S. Bernard* and *Petrus Cluniacensis*: The former a *Cistercian Monk*, declared himself unsatisfied with the Monks taking the Maintenance of the parochial Clergy from them,

them, which was given on purpose to attend the Cure of Souls. But, said *Petrus Cluniacensis*, do we not pray Petr. Cluniac. Ep. l. i. 21. for their Souls? But the Cure of Souls is another thing; and by the Canons of the Church the Monks were forbidden to meddle in parochial Offices of Preaching, Baptizing, Visiting the Sick. So that it might bear a Question in Law, Whether a Monastery were capable of an Appropriation, since by the Ecclesiastical Law, they are not an Ecclesiastical Body? and for that Reason *Hobart* saith, a Nunnery is not; and the same Reason will hold for the other.

D. 55. c. 1.
C. 16. Q. 1.
c. 4, 5, 6, 8,
10, 11.

The Cistercian Order was at first very scrupulous in this matter, when they came hither, and pretended to live only on their own Lands, and disliked Appropriations, as great Injuries to the Clergy, and called it Sacrilege to take their Tithes away from them. This was wisely done of them at first

Mon. I. 699.

Rolls, R. 2.
480.

to ingratiate themselves with the Clergy, and to get as good Lands as they could. But after a while they abated their Zeal, and then they pretended to do nothing without the Bishops Consent; till at last they were as ready as any, and got as large Privileges to exempt their Lands from Payment of Tithes, under which the Clergy suffer to this day.

Mon. I. 736.

But to return to the Beginning of Appropriations among us.

After the Normans coming, they stood upon no Niceties of Law, of Original Grants, but they took Possessions of the Tithes of their Manors, and disposed them as they pleased. The poor parochial Clergy were English, whom they hated, and cared not how poor they were; the Bishops were Normans, as fast as they could make them; and the business of the Great Men, was to encourage the

Norman

Norman Monks that came over, and to build and endow Monasteries for them to pray for their Souls, which they minded so little themselves; and this I take to be the true Account of the Beginning and Increase of Appropriations in England, which at first were only permitted, but are confirmed by the Law since the Statute of Dissolution.

II. In some Appropriations there were Vicarages endowed, and here the Difficulty lies in distinguishing the Tithes which belong to one from the other. Before the Statutes for Endowment of Vicarages, in case of Appropriations, 15 R. 2. 6. 4 H. 4. 12. there were Endowments made, where the Bishops took care of it; but they were generally so remiss in it, that those Statutes were thought very necessary; and none, it seems, was not sufficient. For they eluded the

the former by appointing Vicars out of their own Body ; but the latter Statute requires, That the Vicar shall be a Secular Person, and made Spiritual Vicar, and have such an Endowment as the Ordinary should think fit, otherwise the Appropriation to be void.

The Scandal of the Appropriations was made so great by the Greediness of the Monks, and Easiness of the Bishops, that I find in the Parliament Rolls 2 *H. 4.* 51. a Petition of the Commons, that no Appropriations should be made for the future ; but afterwards they came to that Temper which is expressed in the Statute 4 *H. 4.*

And that before those Statutes, there was no Necessity of the Endowment of a Vicarage, is plain from the Occasion of making them ; and so it hath been agreed in the Courts of Law in the Case of *Britton* and

and Ward. But the main Difficulty is, to state the Tithes which belonged to the Vicarage and to the Appropriation; because there was no certain Limitation either as to Quantity or Kind, although generally the great Tithes of Corn and Hay went with the Parsonage, and the small Tithes and Obventions, and Altarage with the Vicarage.

The best Rules I can find to be Relv. 86. satisfied in this matter, are the Endowment, or Prescription. And where the Endowment is found, yet there may be a Prescription for Tithes not mentioned; because the Bishop had a Power reserved to increase the Allowance: As in the Case of the Vicar of *Gillingham*, who sued for customary Tithes not mentioned in the Endowment; and he recovered them on this Presumption, That the Hardr. 328. Vicarage might be augmented with those Tithes; and in case of long Pos-

Cr. El. 633.

Bulstr. 2. 27.

Palmer, 219.
Cr. Fac. 516.

Possession, it is there said to have been often so held and ruled. Sometimes there is a Difficulty in the Sense of the Words of the Endowment, as in the Case of *Barksdale and Smith*, whether *Decima Garbarum in W.* implied Tithe-Hay; but it was resolved, that although *Garba* seems to relate to Corn, *de omni Annona decima Garba Deo reddenda est. L. Edw. Confess. c. 8.* at least, to something bound up; and so *Lyndwood* applies it to Faggots; yet the Custom was thought sufficient to extend it to Tithe-Hay; and for Tithe-Wood in *Renoulds and Green's Case*. But the greatest Difficulty hath been about *small Tithes*, which is the common Endowment of Vicarages. In the Case of *Ward and Britton*, one Point was, Whether Lambs were *small Tithes* or not. Noy pleaded Custom for it. The Council on the other side said, That *small Tithes* were such

as grew in Gardens ; but Lambs were a sort of *Prædial Tithes* ; however, it was yielded, that Custom might bring them under *small Tithes*.

Another Point about *small Tithes*, was about *Saffron* growing in a Corn-Field, in the Case of *Bedingsfield* and *Freak*, and it was resolved to be *small Tithes*. But the Ground of that Resolution was questioned in the Case of *Udal* and *Tyndal* ; some said it was, because *Saffron* was *small Tithes* where-ever it grew : Others, That by the Endowment, the Parson had only reserved the Tithe of Corn and Hay.

Cr. Eliz. 467.
Moor, 909.
Hutton, 78.
Owen, 74.

Cr. Car. 28.

But suppose whole Fields be planted with *Woad*, which grows in the Nature of an Herb, is this to be reckoned among *small Tithes* ? *Crook* seems to deliver the Sense of the Court so, in the former Case ; but *Hutton* reports it, that it might come to be *maiores Decimæ* and *Prædial*, if

Hutton, 78.

it

it came to be the main Profits of the Place. And the like may hold as to Hemp, Hops, Wooll and Lambs. It's there said, that all these new things, as Saffron, Hemp, Woad, Tobacco, &c. are to be reckoned among *small Tithes*, unless there be some material Circumstance to the contrary. But who is to be Judge of that? And what Proportion changes *small Tithes* into *greater*? But what if the Endowment be so expressed, that only Tithes of Corn and Hay be reserved to the Parson? Then *Rolls* thinks all the rest falls to the Vicar by Construction of Law.

Rolls, A. 2.
331.

By the Word *Altarage*, it was resolved in the *Exchequer*, upon a solemn Hearing, 21 *Eliz.* and after confirmed in the Case of *Wood* and *Greenwood*, not meer Oblations are to be understood, but whatever Custom hath comprehended under it. And I find in the Settlement of the

Littleton,
244.
Hetley, 135.

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Altarage of Cockerington by Rob. Grosthead, Bishop of Lincoln, not only Oblations and Obventions, but the Tithes of Wooll and Lamb were *Mon. II. 604* comprehended under it.

II. The next Discharge of Tithes, is by the Privileges of particular Orders allowed by our Law. For it is to be observed, that no Bulls of Popes make a legal Discharge; but in such Cases where the Law allows them, and my Lord Coke thinks it cannot be insisted upon without danger of a *Premunire*. For *2 Inst. 653.* when the *Cisterians* had procured new Bulls to inlarge their Privileges, as to their Lands in the Hands of Farmers, a Law was passed against it, *2 H. 4. c. 4.* which was grounded on a Petition in Parliament shewing the Novelty and Mischief of it. *Rot. Parl. 2 H. 4. 41. Mon. II. 511. Cr. 2. 578.*

It was affirmed by our great Lawyers, that the Pope's Act in dissolving

Palm. 222.
Walsingh.
1325.

ving the Body of the Templars, which was done, 5 E. 2. had no Effect here till the 17 E. 2. when the Parliament gave their Lands to the Hospitallers.

Cr. 2. 517.
Pal. 222.

And that the Pope could not by his Bull dissolve a Vicarage after they were made perpetual by the Statute; so that our own Law is to govern in this matter.

Extr. de Decimis. c. 10.

But what Orders had Exemption from Tithes by our Law? At first most of the Orders of Monks had it for Lands in their own Hands. This by *Hadrian IV.* was restrained to the *Cisterians*, *Templars* and *Hospitallers*, which is owned in the Canon Law by a Decretal of *Alexander III.* who declares it not to be intended for Lands let out to farm.

2 Inst. 652.

Innocent III. restrains it to such Lands as they were then in possession of; but my Lord *Coke* makes the Grant to be from *Innocent III.* in the

Counsel

Council of Lateran, 17 John ; but he adds, *That it extends only to the Lands which they had before ; which was all that was done then.* But he saith, *That this Privilege was allowed by the general Consent of the Realm ;* however that were, it is certain that the *Late-ran Council* made no Restriction to the three Orders.

But what shall we say to the *Præmonstratenses*, of whom he saith, *That they were discharged by a Bull of Innocent III.* This Point was disputed in the Case of *Dickenson and Green-Popham, 256.* *how.* It was not denied, that they had obtained such a Bull, but it was denied that it was ever received here. On the other side, it was said, that their Bulls were confirmed ; which doth not appear, nor that any Judgment was given in the Case. There is a Bull extant in the Collection of *Innocent's Epistles*, to exempt the *Præmonstratenses* from the *Tithes of*
X *Lands*

*Innocent. 3.
Epist. l. i. Ep.
331.*

Lands in their own Hands; but this was granted in the first year of *Innocent III.* sometime before the *Lateran Council*, and they might enjoy the same Privileges with the *Cister-tians*, if it could be proved, that they were as generally received, which hath not yet been done. As to the *Cister-tians* themselves, there are considerable Limitations of their Privileges.

1. They must relate to Lands in their Possession before the *Lateran Council*, *A. D. 1215.* 17 of King *John*. And in matters against common Right, the Proof in Reason ought to be on those who pretend to particular Privilege. But it's certain the *Cister-tian Order* hath had many Lands in *England* since that time (and it were no hard matter to find them out.) But, suppose they were actually discharged at the Dissolution, and the Proprietaries were

were to enjoy them in the State they found them, is not this a sufficient Discharge? Yes, if it be a legal Discharge; for the Statute only puts them into the same legal Capacity they were in before; but if they were Lands given since the *Lateran Council*, they were not in a Capacity to be discharged by Law; for it was not otherwise received.

2. This Privilege doth not exclude ancient Compositions, as to their *Demesn Lands*. For these Privileges did not go down so easily, but where there were Rectors able to contest it, they brought even the *Cisterians* to Compositions. And the Pope himself appointed Commissioners here to compound the matter: As between the Monastery of *Pipewell* and *Hugh Patesbul* Rector of *Eltjndon*, which ended in a Composition of Six Marks *per Annum* for the Tithes of their *Demesns*. And

another between the Vicar of *Dun-church* and the same Monastery; and between the Rector of *Wynswick* for the Tithes of Ten Yard-Lands in *Colds-Abbey*. All which I have perused in the Register of that Monastery MS.

Coke R. 2. 47.

Moor, 420.

Cr. Car. 424.

3. The Privilege doth not hold where the Monasteries were under Value, and came to the King by the Statute 27 *H. 8.* unless they were continued, and came within the Statute of Dissolution, 31 *H. 8.* And it ought to be proved that they continued separate; for if their Lands were given to the greater Monasteries, they did not retain the Privilege upon Dissolution.

But there is a much harder point concerning the Hospitallers (who had the Lands of the Templers after 17 *E. 2.*) Their Lands were not given to the King by the Statute of Dissolution, 31 *H. 8.* but 32 *H. 8. c.*

24. and the Clause of Exemption was left out of the Grant. Upon which a great Question hath risen, Whether their Lands are exempt or not? And Judgment was given against them in the Case of *Cornwallis*, or *Cr. 2. 58.*
Quarles and *Spurling*. But in the Case of *Whiston* and *Weston*, it was argued, *Moor, 913.*
 That the King had the same Privileges which the Hospitallers had. *Jones, 186.*
 But it was replied, That other Lands given to the King after that Act, had not those Privileges, as *Chanteries*, &c.
 It was said, that it was, *because they were not regular Ecclesiastical Bodies: Bridgm. 33.*
 Which was a strange Answer, considering what sort of Ecclesiastical Bodies the Hospitallers made, when only the Grand Master and two *Latch. 89.*
 Chaplains are bound to be Ecclesiasticks; and in Foreign Judicatures *Rolls R. 2. 409.*
 they were denied to be any part of the Clergy, being only an Order of *Selden of Tithes, 122.*
 Knights under some particular Regulations. X 3 But

Of the Duties and Rights

But suppose them capable of Appropriations of Tithes, yet when the Body is dissolved, the Appropriation falls of it self, unless continued by Act of Parliament, as those of the Templars were to them; and those of the Monasteries by 31 H. 8. but where there is no Clause to continue the Appropriation, it must be understood to be left to the natural Course of things, and so the Appropriation sinks.

III. The third legal Exemption is from Prescription, and ancient Compositions. This seems a difficult Case, because something less than the real Value is to be taken, and the Rule *Lynd. f. 101.* in *Lyndwood* is, *non valet consuetudo, ut minus quam Decima solvatur*; but in all such Prescriptions and Compositions there is less than the true Value.

To clear this matter, I shall shew,

1. That

1. That by our Ecclesiastical Law, all Compositions are not condemned.

2. That by the Common Law all Prescriptions are not allowed. And if these things be made out, it will follow, that where the Compositions and Prescriptions are legal, the Clergy may with good Conscience submit to them, as they do in other matters of Law.

1. As to the Ecclesiastical Law, *Lyndwood* himself makes these Limitations;

1. In case of personal Tithes. He grants that as to them, a Man may with a good Conscience observe the Custom although it be under the real Value. Now these are founded on the same Laws that *Prædial* and *Mixt Tithes* are; and by the Stat. 2 E. 6. c. 13. they are reduced to a customary Payment before *Easter*,

Lynd. f. 97.
b. c. Conluca
f. 99.

as it had been used Forty Years before : But besides these there were Offerings to be compounded for, and the *Easter Duties* are a kind of Composition for personal Tithes.

Lynd. f. 98.

2. In small Tithes, the customary Payment is allowed. The Payment in *Lyndwood's* time, was 6 *ob.* for Six Lambs, because it was the Tenth of the Value at that time of a Lamb of a year old ; the Seventh Lamb was to be paid in kind, for which 3 *ob.* were to be paid back, because three Lambs were wanting of the Number Ten. But can any one believe that 5 *d.* was the true Value then of a Lamb of a year old? And *Lyndwood* doth not suppose it be the exact Value ; but it was such as the Provincial Constitution determined, and he allows Compositions *super minutis Decimis*.

Lynd. f. 97.b.

3. Compositions were allowed with the Bishop's Consent with Lay persons

persons for their Tithes. As to what is past, there was no doubt; but for the future he saith, it doth not hold *sine Judicis auctoritate*; which implies, that by his Consent it may. And if so, then a *Modus decimandi* so qualified, is allowed by the Ecclesiastical Law. Such Compositions as these were entred into the Bishop's Registries, and if they were then made upon a valuable Consideration at that time, I doubt the Force of Custom will get the better of the Reason that may be taken from the great Difference of Valuation of things.

2. Let us now consider what Prescriptions and Compositions are not allowable at Common Law.

1. No Prescription *de non decimando*, is allowed among Lay persons, because none but Spiritual Persons are by the Law capable of Tithes in their own Right. A Lay-man, saith Mr. Selden, cannot be discharged of all Pay-
ment

Selden of
Tithes, p. 409.

Coke R. 2. 44.

Cr. 2. 47.

Rolls, 653.

Moor, 531,

425.

Hob. 297.

Gr. El. 599.

2 R. 45.

ment by meer Prescription, unless he begin the Prescription in a Spiritual Person. And to the same purpose our great Lawyers speak. But in the famous Case of *Pigot and Hern*, a Distinction was found out, which may prove of dangerous Consequence, viz. That although the Lord of a Manor cannot prescribe for Tithes, because he is not capable of them by our Law, yet he may prescribe for a tenth Shock, as a *Profit appendre*, as a thing appurtenant to his Manor; and so he may have *decimam garbam*, but not *Decimas garbarum*. Upon which Resolution it is said in the Bishop of *Winchester's* Case, That the Lord of a Manor may have Tithes as appurtenant to his Manor: For which there is no Foundation in our Ancient Laws or Customs, that I can find, and is inconsistent with what is before acknowledged, that none but Spiritual persons

persons are capable of Tithes. But in plain Truth, this Case is not truly represented; and my Lord Chief Justice *Hobart*, a person of great *Hob. 300.* Judgment and Learning in the Law, hath told the World, That this famous Reporter hath sometimes given his own Opinion, and that sudden, instead of the Resolution of the Court, which must take much off from the Authority of his Reports; especially when the Case is differently reported by others; as it falls out in this Case. For Serjeant *Moor*, who was of Council in that Case, saith, That the Defendant pleaded a *Modus* *Moor, 483.* *decimandi* in Satisfaction for Tithes, which was 6 s. per Annum: But as to the other point, Whether such an Ancient *Modus* being made with the Lord of a Manor, binds the Copyholders, it is out of our way; but surely there ought to be good Proof, that the *Modus* was made before the Copyholds

Moor, 278.

Seld. p. 398.

holds were granted, which is not offered, but only that *it might be so*, which deserves no other Answer, but that it might not be so. And it is hard indeed, when Judgments are given upon Possibilities. And for the Distinction of *decima Garba* and *Decima Garbarum*, in a Composition for Tithes, is the same thing. Mr. Selden, as to this Case of *Pigot and Hern*, saith, *It was an Inheritance of Tithes from immemorial time, by Virtue of an Ancient Composition.* And he would not understand the Judges in any other Sense: For no kind of Infeodation of Tithes is allowable here, he saith, so as to create in Lay-men a perpetual Right to them (except only by the Statute of Dissolution of Monasteries) unless it be derived from some Ancient Grant of Discharge from the Parson, Patron and Ordinary, with a Consideration of Recompence to the Parson; and that

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either from time immemorial, or Ancient Composition. And to the same purpose he speaks in another place, where he owns, that by our Law every Parson had a common Right to the Tithes of all annual Increase (*Prædial* or *Mixt*) within the limits of his Parish; and any Title or Discharge must be specially pleaded.

P. 285.

2. Where a Prescription is pleaded *de Modo decimandi*, the actual Recompence by Composition must be shewed. For, as my Lord Coke saith, a *Modus decimandi* is intended as a yearly Sum in way of Satisfaction for the Tithes to the Parson; which Rolls calls the *Actual Recompence*.

Select Cases,
43.

In the Register the Account of the *Modus decimandi* is thus set down:

1. There was a real Composition, as Registr. 38.b.
Four Acres of Land for some small Tithes.
2. There was an Agreement in Writing, by the Consent of Ordinary and Patron.

But

2 Inst. 490.

But my Lord Coke saith, the Modus may as well be for a Sum of Money as for Land.

Suppose no Ancient Composition in Writing can be produced, how far doth a Prescription hold?

Bulst. 2, 238.

1. It must be immemorial, or time out of mind. Here a great Point arises fit to be considered: Suppose the thing it self hath been within Memory, as Improvements by Hops, Fruit-trees, &c. doth not a Composition bind in this Case?

March, 87.

I answer, that we are to distinguish Personal Contracts from Real Compositions. In the Case of *Hitchcock* and *Hitchcock*, there was a Contract between the Vicar and Parishioners, but it was denied to be a real Composition, although confirmed by the Ordinary, and affirmed not to be binding to the Successors.

Hob. 176.

A Composition by a meer verbal Agreement in the Case of *Hawles* and

Bayfield

Bayfield was declared to be neither binding to the Party nor his Successors. But in the Case of *Tanner and Small* it was declared to hold for Years, but not for Life. *Yelv. 94, 95.*

My Lord Coke seems to be of Opinion, That if it be a Prescription, it must be time out of Memory of *2 Inst. 653.* Man; but that a real Composition *Select Cases, 40.* may be either before, or within Memory of Man; but then it must be by Parson, Patron, and Ordinary. *2 Inst. 655. Leon. 1. 151.*

It is well observed by Sir Simon Degge in his useful Book about these matters, that although real Compositions are supposed in Law to be the Foundation of Prescriptions *de Modo decimandi*, where the Patron, Ordinary and Parson did consent to them; yet that the most of them have grown up by the Negligence and Carelessness of the Clergy themselves, which, I am afraid, is too true. *Parson's Conn. Part. 2. c. 20.*

And

And he is of Opinion, That no real Composition can be made now to bind the Successor, since the Statute, 13 *Eliz. c. 10.* which restrains all binding Grants to One and twenty Years, or Three Lives; and if so, then the Consent of Patron and Ordinary cannot make it good.

2. It must be reasonable, and therefore it hath been rejected in these Cases :

1. If it be a Prescription to pay a certain Tithe without the Parson's View of the Nine Parts, because, saith *Hobart*, it is against the Law of Partition, in the Case of *Wilson* and the Bishop of *Carlisle*.

Hob. 107.
Rolls, 647.

Rolls, 649.

Cr. El. 276.

March, 65.

2. If there be no Recompence to the Parson, as in the Case of *Scory* and *Barber*, the Prescription was founded on the Parishioners finding Straw for the Body of the Church.

3. If it be for paying only what was due in lieu of other Tithes; as

in

in the Case of *Ingoldsby and Johnson*, Cr. Eliz. 786.
C. Select Cases, 45.
that they paid their other Tithes in

lieu of Tithes of dry Cattel; or in
Case a Load of Hay be prescribed Bull. 2. 138.

for in lieu of Tithes-Hay, or Ten
Sheafs of Corn for the Tithes of all
the rest.

4. If it be not for something cer-
tain and durable. For this, saith *Hob. 40.*
Hob. 40.] shew an Original Weakness in
the Composition; being of a thing
certain and durable for that which is
not so.

IV. The last Exemption or Dis-
charge that is pleaded as to the pay-
ment of Tithes, is Unity of Pos-
session: That is, where a Monastery
had the Right of Tithes by Appro-
priation, and had other Lands which
did not pay Tithes, because the
owners were to receive them, these
were actually free at the time of Dis-
solution; and the Question is, Whe-

Y

ther

Moor, 47.

420.

C. R. 2. 47.

Moor, 533.

Mob. 298.

11 R. 14.

ther they are legally so by Virtue of the Statute? It cannot be denied, that Unity of Possession is in it self no legal Discharge; but whether by the Words of the Statute the Judges were divided in Opinion. But afterwards in the Case of *Green and Bosken* the Judges allowed it, so it were not a meer Unity of Estate, but of Occupation. *Hobart* saith, That after it had been long controverted, it was received as the common Opinion. *Coke*, That where Unity of Possession gives a Discharge, the Title must be clear, the Non-payment general, and the Prescription time out of Memory; but if the Appropriation were made in the time of *Ed. 4. H. 6.* it could not be discharged By Unity; nor if it were a late Abby-preservation.

Thus I have endeavoured to lay this matter before you as briefly and clearly as I could, from the best

Light

Right: I could get, that I might give you such Directions, that you may neither run into needless and vexatious Suits, nor be run down by frivolous Pretences. It is your great Advantage that you have the Law of your side, if you understand it aright; but have a care of being set on by such, whose Interest it is to promote Suits; and I am sure it is yours to prevent them, if it be possible, and as much as lies in you. The Church's Right is not to suffer by your Negligence; and you are not to make the Church to suffer by your Contentions. He that loves going to Law, seldom fails of having enough of it; he suffers in his Purse, in his Reputation, in his Interest; and the Church suffers by his Means. Endeavour to gain, as much as may be, the Love of your People by a kind, modest, courteous and peaceable Behaviour, which is the best

way to prevent, or to compose Differences. If you are forced to sue for your Maintenance, let them see that you are forced to it, and that you are always willing to put an end to all such Disputes, if the Church's Right be secured, which you are bound to preserve.

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OF THE
OBLIGATION

To observe the
Ecclesiastical CANONS

AND
CONSTITUTIONS,

AT
A VISITATION

October 29th. 1696.

IN speaking clearly and distinctly to this Case, there are these two Things to be considered;

I. By what Authority they do oblige.

II. In what Way and Manner they oblige.

Y 3

I. The

Of the Duties and Rights

I. The first thing to be considered, is the Authority by which Ecclesiastical Canons and Constitutions do oblige. For, if there be not sufficient Authority, there cannot be that Obligation on Conscience, which supposes a legal Exercise of Power, or a just Right to command. Our Obedience to the Orders of our Superiours, is due by Virtue of that Divine Law which requires us to be subject for Conscience-sake: But our Obedience is to be regulated by the Order of Justice, i. e. it ought to be according to Law. Therefore it is necessary, in the first place, to enquire, Whether there be among us any such things as Ecclesiastical Laws, i. e. such Rules, which according to the Constitution of our Government, we are bound to observe.

For we are Members of a Church established by Law, and there are legal Duties incumbent on us, with respect

respect, not only to the Laws of God, but of the Realm. For, although our Office and Authority, as Churchmen, hath a higher Original; yet the Limitation of the Exercise of it, is within such Bounds as are allowed and fixed by the Law of the Land.

It is therefore a matter of great Consequence to us to understand how far our Ecclesiastical Constitutions are grounded upon the Law of the Land, which cannot be done without searching into the Foundations of our Laws.

Which lie in three Things: 1. Immemorial Custom. 2. General Practice and Allowance. 3. Authority of Parliament.

And I shall endeavour to shew how far our Ecclesiastical Constitutions are founded on these.

Y 4 1. *Imme-*

1. *Immemorial Custom.* Our greatest Lawyers allow Ancient Custom to be one of the Foundations of our Laws; and my Lord Coke calls it one of the main Triangles of the Laws of England. I suppose he means Foundations. And another saith, That the Common Law of England is nothing else but the common Custom of the Realm. My Lord Chief Justice Hales saith, That the common Usage, Custom and Practice of the Kingdom, is one of the main Constituents of our Law. Coke quotes Bracton's Authority to prove, That Custom obtains among us the Force of a Law, where it is received and approved by long Use. And of every Custom, he saith, there be two Essential Parts, Time and Usage; Time out of Mind, and continual and peaceable Usage without Interruption. But in Case of Prescription or Custom, he saith, That an Interruption of Ten or Twenty Years binders not the Title, but an Interruption

Inst. 11. b.
115. b.
344

Preface to
4 R.
Sir John Davis
vis Pref.

Hales History
and Analysis
of the
Law, MS.

Inst. 110. b.

Inst. 114. b.

in the Right; the other is only an actual Suspension for a time.

It may be asked, How Time and Usage come to make Laws, since Time hath no Operation in Law, saith

Grot. de J. B.
§ P. l. 2. c.
4. Sect. 1.

Not of it self, as Grotius there saith, but with the Concurrence of other Circumstances it may.

Bracton saith, *longa possessio parit jus possidendi*; and by a long and peaceable Possession Dominion is transferred, without either Title or Delivery; which he founds on this good Reason, That all Claims of Right ought to have a certain Limitation of Time, and length of Time takes away any Proof to the contra-

Bract. l. 1. c. 3.

ry. Littleton saith, That Time out of Memory of Man, is said to give Right, because no Proof can be brought beyond it. And this he calls Prescription at Common Law, as it is distinguished from Prescription by the several Statutes of Limitations.

L. 2. c. 22. n. 1.
L. 4. c. 17. n. 5.
c. 40.

Littl. Ten.
Sect. 170.

But

But whence is it then, that an immemorial Possession gives Right?

Is it from the meer Silence of the Parties concerned to claim it? No, Silence gives no Consent, where Ignorance or Fear may be the Cause of it. And is it a Punishment upon the Neglect of the Party concerned? So *Bracton* saith, *Time doth imper patientiam & negligentiam veri Domini*. But meer Neglect doth not overthrow Right, unless there be an antecedent Law to make that Neglect a Forfeiture?

Is it from a Presumptive Dereliction? But that supposes not bare Continuance of Time, but some kind of voluntary Act, which implies a sort of Consent which doth not appear in this Case. And it is a great Mistake in those, who think there is no Presumptive Dereliction, where there is not a full Consent, for it may be, where there is the Consent

of a mixed Will, i. e. partly voluntary, and partly involuntary; when the Circumstances are such, as the Person rather chuses to leave his Right, than submit to the lawful Conditions of enjoying it: As if a Man would rather quit his Fee than perform the Service which belongs to it.

Is it from the common Interest of Mankind, that some Bounds be fixed to all Claims of Right? Because otherwise that Men will be liable to perpetual Disturbance, if the Right be permitted to be claimed beyond any possibility of Proof.

Or is it, lastly, that in such Nations where immemorial Custom obtains the Force of a Law, it seems agreeable to the Foundations of Law, that a long continued Possession should carry Right along with it.

And this was the Case here in England, as not only appears by what

*Glauv. Prol.**Dr. and St.
c. 7.*

what *Bracton* hath said, but *Glauvil* makes a great part of our Law to consist of reasonable Customs of long Continuance. And *St. Germain* affirms Ancient general Customs to be one of the principal Foundations of our Law; and that they have the Force of Laws, and that the King is bound by his Oath to perform them. And it is worth our while to observe what general Customs he doth instance in; as the Courts of Equity and Law, the Hundred Court, the Sheriffs Turn, the Court Baron, &c. which depend not upon Acts of Parliament, but the Ancient Custom of *England*, which he calls the *Common Law*. And among these Ancient Customs, he reckons up Rights of Descent, Escheats, the different sorts of Tenures, Freeholds, and the Laws of Property, as they are received among us.

We

We are now to enquire, how far any of our Ecclesiastical Constitutions can be said to be built upon this Foundation; and upon immemorial Custom generally received.

1. (1.) The Distribution of this National Church into two Provinces, in each whereof there is an Archbishop with Metropolitcal Power, which lies chiefly in these things, (1.) The Right of Consecration of his Suffragans. (2.) The Right of Visitation of every Diocess in such Way and Manner as Custom hath settled it. (3.) The Right of receiving Appeals from Inferiour Courts of Judicature in Ecclesiastical Matters. (4.) The Right of presiding in Provincial Councils of the Suffragans of his Province; which by the most Ancient Constitutions of this Church, were to be held once a Year; so it was decreed in the Council under Theodore, A. D. 673. *Spel. Con. I.* but P. 153.

but by the Difficulties of the Times, they were discontinued, and so the Authority of examining things through the Province, seame by the kind of Devolution to the Archbishop and his Courts. (5.) The Custody of vacant Sees, by the Custom of England, falls to the Metropolitan, if there hath been no Custom or Composition to the contrary. And so it hath been upon so

Rolls, 2. 322.

Bulst. 3. 176.

Brownl. 1. 43.

Keble, 3. 91.

*Panor. in c.
Cum olim.*

learned Debates resolved in part Courts of Common Law. Coke thinks that of common Right it belongs to the Dean and Chapter, but by Custom to the Archbishop. But *Pantormian* saith, There was no Pretence of common Right for them, till the time of Boniface VIII.

2. The ordinary Jurisdiction of every Bishop over the Clergy of his own Diocess. This is as ancient as Christianity among us. For no sooner were Churches planted, but there

were

were Bishops set over them; who had from the Beginning so much Authority, that none of the Clergy could either receive or quit his Benefice without their Consent and Approbation; and they were all bound to give an Account of their Behaviour at their Visitations; and in case of Contempt, or other Misdemeanours, they were to proceed against them according to the Canons of the Church. I do not say the Diocesses were at first all modelled alike, or with the same Bounds which they now have; which was unreasonable to suppose, considering the gradual Conversion of the Nation. For at first there was but one Bishop in every one of the Saxon Kingdoms, except Kent, where was but one Suffragan to the Metropolitain for some time, till the Kingdoms came to be united; nor the Kings consented to an Increase of several

several Diocesses, and uniting them under one Metropolitan, which was a Work of Time. But in all the Saxon Councils we find no mention of any Ecclesiastical Jurisdiction, but what was in the Bishops themselves, *Concil. Cloveshoo Can. 1, 4, 5. Concil. Cealchyth. Can. 1. Egbert Canon. c. 43, 62.* The first who began to seek for Exemptions, were the Abbots, who were under the Bishop's Jurisdiction, who was too near them; and therefore they endeavoured to get under the Pope's immediate Jurisdiction by Charters of Exemption, which the great Abbies either procured or made; and the more Ancient the more Suspicious. But the Lord Chancellor and three Chief Judges declared, That by the Common Law of England, every Bishop in his Diocess, and the Archbishops in Convocation may make Canons to bind within the Limits of their Jurisdiction.

Moor, R. 783.

Introd

3. The

3. The subordinate Jurisdiction which was lodged in the Bodies of the Clergy resident in Cathedral Churches, and of Archdeacons in the several Diocesses: I cannot find either of these to have had any Jurisdiction here before the Conquest, neither were there any Courts of Justice out of the several Counties before; for all Causes were transacted in the County Courts and Sheriffs Turns, and Appeals lay from them to the Supreme Judicature of the King and the Lords. But this doth not hinder but these Courts may be founded on the Law of England. And so the original Jurisdiction, which of Right belonged to the Bishop, might by degrees, and a gradual Consent, come to be committed, as to some parts, to the Bodies of Cathedral Churches, and to the Archdeacons, who are, saith my Lord Coke, Sixty in England. *1 Inst. 94*
We are told in a late Case of

Z

Woodward

Ventris, II.
189.
269.

Godol. 61, 65.

Woodward and Fox, That there are Archdeacons in England by Prescription, which have no Dependency on the Bishop, but are totally exempt. And for this Godolphin is cited, who refers to the Gloss on the Legatine Constitutions, f. 27. where we read of some Archdeacons having a customary and limited Jurisdiction separate from the Bishop, for which a Prescription lies. But this is only for some special Jurisdiction; as the Archdeacon of Richmond for Institutions, which came first by Grant from the Bishops; but that not being to be produced, they insist upon Custom and Prescription, as the Deans and Chapters do, where the Ancient Compositions are lost. But none who understand the Ancient Constitution of this Church, can suppose either of them to have been Original, since the Right to the Jurisdiction of the Diocess was in the Bishop, before there were here either

Arch-

Archdeacons or Chapters with Jurisdiction. In the Case of Chiverton and Trudgeon, it was declared, That an Archdeacon might have a peculiar Jurisdiction, as to Administration, &c. as the Dean of St. Paul's had at S. Pancras; and so the Archdeacon of Cornwall, as to Wills. In the case of Gastril and Jones the Chief Justice declared, That the Archdeacon is the Bishop's Officer, and his Authority subordinate to the Bishops, and granted by them; but if special Custom be pleaded, that must be well proved; to which Dodderidge assented.

But we must distinguish between Archdeacons by Prescription, for which I can find no Foundation (being all derived by Grant from the Bishop) and Archdeacons having some kind of Jurisdiction by Prescription, which others have not; which cannot be denied. All the Power which the

*De Offic.
Archdiac.*

*Gloss. in Const.
Orb. p. 27.*

*Ventris, II.
269.
4 Inst. 339.*

Archdeacons have by virtue of their Office, is *per modum* *scrutationis simplicis*, as Lyndwood speaks, *tangquam Vicarius Episcopi*: Whatever Power they have beyond this, is not *Jure communi*, but *Jure speciali*, and depends either upon Grant or Custom, which the Gloss on the Legatine Constitutions calls a limited Jurisdiction.

The Archdeacon's Court is declared by the Judges in Woodward's Case, to have been, time out of Mind, settled as a distinct Court, from which there lies an Appeal to the Bishop's Court, by the Statute, 24 H. 8. c. 12.

And so the Archdeacon's Jurisdiction is founded on an immemorial Custom, in Subordination to the Bishops.

As to Deans and Chapters, I observe these things:

1. That although Ecclesiastical Bodies in Cathedrals were very ancient, yet we read not of any Jurisdiction

diction peculiar to themselves, during the Saxon times. My Lord Coke ^{3 R. 75.} saith, There were Chapters, as the Bishop's Council, before they had distinct possessions. And by their Books, he saith, it appears, that the Bishops parted with some of their Possessions to them, and so they became Patrons of the Prebends of the Church: Such were London, York and Litchfield.

2. That several of our Chapters were founded and endowed by the Bishops since the Conquest: Such was that of Salisbury by Osmund out of his own Estate, as appears by his Charter, and the Confirmation of H. 2. So was that of Lincoln by Remigius, who removed the See from Dorchester thither, and placed there a Dean, Treasurer, Præcentor, and Seven Archdeacons, as Henry of Huntingdon saith, who lived near the time. And in following times those of Exeter and Wells were settled as

Dean and Chapter, for they were Ecclesiastical Bodies before, but not under that Denomination.

3. That some had the legal Rights of Dean and Chapters, as to Election of Bishops, and Confirmation of Leases, &c. but were a Monastick Body consisting of Prior and Convent: Such were Canterbury, Winchester, Worcester, after the Expulsion of the Secular Canons, for the Monks not only enjoyed their Lands, but were willing enough to continue the Name of Dean among them.

As at Canterbury, after Dunstan's time, Agelmothas is called Dean; in Worcester Wolstan is called Dean when he

was Prior; and Wulfius, upon the first Change, is said to be placed

Decani, by Florence of Worcester. At

Notwich, Herbert the Bishop founded

the Prior and Convent out of his own

Possessions in the time of William II.

and they became the Chapter of the

Bishop

Mon. I. 140.

Florent. A.
969.

Bishop by their Foundation. Now *Anderson, II.*
as to these, it is resolved in the *Dean*
and Chapter of *Normich's Case*, That
when the King transferred them
from a Prior and Convent, the Legal
Rights remained the same. And in *1 Inst. 102.b.*
Hayward and *Fulcher's Case*, the *3 R. 75.*
Judges declared, That an Ecclesiasti- *Palmer, 501.*
cal Body may surrender their Lands,
but they cannot dissolve their Corporation, *Jones, 168.*
but they still remain a Chapter to the
Bishop. And it was not only then
delivered, but since insisted upon
in a famous Case, That it was the *Quo Warranto, 14.*
Resolution of the Judges, That a Sur-
render cannot be made by a Dean and
Chapter, without Consent of the Bi-
shop, because he hath an Interest in
them.

4. That *H. 8.* endowed some as
Chapters to new erected Bishopricks,
as *Chester, Bristol, Oxford, &c.* 3 *H.*
8, 9. 34 *H. 8: 17.* and united others,
as *Bath and Wells, and Coventry and*

Z 4

Litchfield,

Litchfield, 33 H. 8. 39. 34 H. 8.
15.

5. That where the Custom hath
so obtained, there may be a Legal
Chapter without a Dean, as in the
Diocesses of S. David's and Landaff,
where there is no other Head of the
Chapter but the Bishop, but they
must act as a distinct Body in Electi-
ons and Confirmations of Grants
by the Bishops.

6. That by the Ancient Custom
of England, there are sole Ecclesiasti-
cal Corporations as well as aggre-
gate. A sole Ecclesiastical Corpora-
tion, is, where a single Person re-
presents a whole Succession, and un-
der that Capacity is impowered to
Receive and to Convey an Estate to
his Successors: As Bishops, Deans,
Archdeacons, Parsons, &c. But Par-
sons and Vicars are seized only in
Right of the Church, but as to a
Bishop, he may have a Writ of Right,
because

5. Inst. 341. b.

200. b.

because the Fee-simple abideth in him and his Chapter; and so may a Dean and Master of an Hospital: And these are called Bodies Politick by Littleton. Sect. 645. Sect. 413.

That the Exercise of the Bishop's Power may be restrained by ancient Compositions, as is seen in the two Ancient Ecclesiastical Bodies of St. Paul's and Litchfield. Concerning which, it is to be observed, That where the Compositions are extant, both Parties are equally bound to observe their parts. Thus by the Remifness and Absence of the Bishops of Litchfield from their See, by going to Chester, and then to Coventry, the Deans had great Power lodged in them, as to Ecclesiastical Jurisdiction there. After long Contests, the matter came to a Composition, A. D. 1428. by which the Bishops were to visit them but once in Seven Years, and the Chapter had Jurisdiction over their own Peculiars. So in the Church

Church of Sarum the Dean hath very large Jurisdiction, even out of the Bishop's Diocess; which makes it probable to have been very ancient; but upon contest, it was settled by Composition between the Bishop, Dean, and Chapter, A. D. 1391. But where there are no Compositions, it depends upon Custom, which limits the Exercise, although it cannot deprive the Bishop of his Diocesan Right.

4. The Delegate Jurisdiction which was committed to the several Officers of the Bishops Courts, and the Manner of their Proceedings, is founded upon immemorial Custom. In the Saxon times I find no Delegation of Ecclesiastical Jurisdiction; for the Bishops sat in person in the County-Courts, and there heard Ecclesiastical Causes, as appears by the Charter of H. 1. when

when he pretended to restore the Saxon Laws, c. 7. But William I. had settled the Consistory Court by as good a Law as any was made at that time, distinct from the County Court, and required all Ecclesiastical Causes to be there heard; and his Son H. I. did but make a shew of restoring the Saxon Laws, and the former Law came to be generally received; and so Mr. Selden yields, that it grew to be a general Law; which shews that it obtained the Force of a Law by Consent, as well as by Authority. The Consistory Courts being thus settled, and Numbers of Causes there depending, and the Bishops being then by H. 2. in the Constitutions of Clarendon strictly tied to Attendance upon the Supreme Courts of Judicature, with other Barons, there came a Necessity of taking in other Persons with a delegated Power to hear Causes, and to do such other Acts of Juris.

Selden of
Tithes, p. 413.

Bordenave,
£. 69.

Jurisdiction as the Bishops should appoint. For it was still allowed that *Jure communi*, the Jurisdiction was in the Bishop; but *Jure speciali*, as in *auxilium Episcopi*, it might be delegated to others. And so it hath been here received, and not only here, but it hath been the general Practice of Christendom. As to the manner of Proceeding in the Ecclesiastical Courts, it is the same in all Parts, and built on the same Grounds with those of our Courts of Equity and Admiralty, which are a different from those of the Common Law.

5. The settling Parochial Rights, or the Bounds of Parishes depends upon an ancient and immemorial Custom. For they were not limited by any Act of Parliament; nor set forth by special Commissioners; but as the Circumstances of Times, and Places, and Persons did happen

to make them greater or lesser. In some places Parishes seem to interfere, when some place in the middle of another Parish belongs to one that is distant; but that hath generally happened by an Unity of Possession, when the Lord of a Manor was at the Charge to erect a new Church, and make a distinct Parish of his own Demesns, some of which lay in the Compass of another Parish. But now care is taken by Annual Perambulations to preserve those Bounds of Parishes, which have been long settled by Custom. But the Bounds of Parishes is not allowed to belong to the Ecclesiastical Jurisdiction.

II. The next Foundation of Law, is a *General Practice*, and *Allowance* i. e. when things of themselves do not oblige by the Authority of those that made them; yet being generally received and allowed,

lowed, they thereby become Law to us. This we have in an Act of Parliament, 25 H.8. c. 21. wherein it is said, That the People of England are only bound to such Laws as are properly their own, being in Subjection to no Foreign Legislative Power. But were not many things here received for Laws, which were Enacted by a Foreign Authority, as the Papal and Legatine Constitutions. True, say they, but it is not by Virtue of their Authority, but by the free Consent of the People in the Use and Allowance of them: And so they are not observed as the Laws of any Foreign Prince, Potentate, or Prelate, but as the customed and ancient Laws of this Realm, originally established as Laws of the same, by the said Sufferance, Consent and Custom, and no otherwise.

So that here we have a full and exprefs Declaration by Parliament, That such Canons as have been re-

ceived

ceived and allowed by ancient Custom, make a part of our Laws, and continue to oblige, provided that they be not repugnant to the King's Prerogative, nor to the Laws, Statutes, and Customs of the Realm, as it is expressed in another Act of the same Parliament, 25. H. 8. c. 19.

The Ecclesiastical Laws, saith my Lord Coke, are such as are not against ^{1 Inst. 344} the Laws of the Realm, viz. the Common Law, and the Statutes and Customs of the Realm: And according to such Laws the Ordinary and other Ecclesiastical Judges do proceed in Causes within their Consuance.

So that by the Acknowledgement of this great Oracle of the Common Law, there are Laws Ecclesiastical in force among us, and Causes to be judged by those Laws, and Officers appointed by the Law to proceed according to them.

The

Of the Duties and Rights

The Ecclesiastical Laws and Ordinances are owned by the Statute, 27 H. 8. c. 20. 32 H. 8. c. 7. 35 H. 8. c. 19. after the Commission appointed for the Review of them. 1 E. 6. c. 2. The Ecclesiastical Courts are appointed to be kept by the King's Authority, and Process to be issued out in his Name in all Suits and Causes of Instance between Party and Party, where the Causes are particularly mentioned, which belong to those Courts, and no Alteration is made in them, as to their powers, but only that the Process should be in the King's Name.

But some persons in our Age, who love to be always starting Difficulties to humour such as bear ill Will to our Constitution, have suggested, That although this Act was repealed, 1 Q. M. 2. yet that Repeal was taken off, 1 Jac. 25. n. 48. therefore, say they, this Stat. 1 E. 6. is revived.

But

But the plain and short Answer is this, That there was no need of any Debate about the Repeal of the Statute of *E. 6.* after the first of *Q. Eliz.* because then the Statute, *25 H. 8. c. 20.* was expressly revived, wherein the Bishops were impowered to act as before they might have done, according to the *Laws and Customs of the Realm.* By which no less Men of the Law than *Coke, Popham,* and other Judges *C. 12. 8.* did think the *Stile of the Court,* and *Manner of their Proceedings* was comprehended. And the *Ancient Episcopal Jurisdiction* is declared to be according to *Law,* by the Stat. *1 El. c. 1.* and all *Foreign Jurisdiction* is abolished, and the *Ecclesiastical Jurisdiction* annexed to the *Crown of this Realm;* which is owned by every Bishop when he takes the *Oath of Supremacy.* How then can it be imagined, that he should do any more to the Prejudice of the Crown, by the Process being in the Bishop's

A a Name,

Name, than the Lord of a Manor doth, when he keeps his Courts in his own Name? To suppose that it is owning a *Foreign Jurisdiction*, is ridiculous; for the Bishops of *England* never pretended to act as *Ordinaries*, by Virtue of a Jurisdiction from the Pope, but by Virtue of their Original Authority which they had by the Laws of the Realm, as to their exterior Jurisdictions. And the Authority they then acted by from the Pope, was in Cases *extraordinary*, when they were delegated by particular Commission. And if there had been any real Derogation from the King's Prerogative, in the Process being in the Bishop's Name, can any Man of Sense imagine, that it would have been permitted in such jealous times as to *Supremacy*, as the latter end of *H. 8.* and the whole Reign of *Q. Elizabeth* were, wherein the Bishops wanted not Enemies, but their Malice

lice would have been too apparent, if they had insisted on such Objections? But to proceed in shewing that the Ecclesiastical Laws have been owned by Acts of Parliament since the Reformation, 2 E. 6. c. 13. n. 13. The Ecclesiastical Judges are required to proceed according to the King's Ecclesiastical Laws.

And to the same purpose, 1 El. c. 2. n. 23.

Accordingly my Lord Coke frequently owns the Ecclesiastical Laws and Jurisdiction, so they be bounded by the Laws of the Realm; of which there can be no Question. For deciding of Controversies, and for distribution of Justice, saith he, there be within this Realm two distinct Jurisdictions; the one Ecclesiastical, limited to certain spiritual and particular Cases; the other secular and general, for that it is guided by the common and general Law of the Realm.

1 Inst. 11.

4 Inst. 321.

Proam. to

4 Inst.

1 Inst. 96.

And to the same purpose my Lord Chief Justice *Hales* in several places in a MS. Discourse of the *History and Analysis of the Common Law*, ch. 1, and 2. But here the great Difficulty lies in finding out what these *Canons* and *Constitutions* are, which have been so received and allowed by our *Laws*.

For it is certain, that several *Canons* made by Popes, were not received here, as in the Statute of *Merton*, about *Legitimation* of Children born before Marriage, Stat. Mert. c. 9. where the Lords declared they would not alter the old *Laws* for a new Canon. For *Alexander III.* in the time of *Hen. II.* had made a Canon to that purpose; but as *Glanvil* saith, it was *contra jus & consuetudinem Regni*.

Glanvil, l. 7.
n. 15.

Stat. de Bigamis, c. 5.

The Canon to take away the Benefit of the Clergy from *Bigami*, was debated in Parliament how far it should be received, and the Sense there

there declared, which was complain-
ed of, 51 E. 3. and taken away,
1 E. 6. c. 12.

The Canon against Investiture of
Bishops by a Lay-hand, was never
here received; for although H. 1. af-
ter a long Contest gave it up, yet
it was resumed by his Successors.

The Canons for Exemption of
the Clergy, were never fully received
here. Some Lawyers say, it was ne- *Popham, 157*
ver observed; I suppose they mean,
according to the Canons, but that
they had legal Privileges here, al-
though not a total Exemption, can-
not be denied by any one versed in
our Laws from the Saxon times. *Spel. Conc.*
2. 342.

The Pope's Canon for the Cler-
gy not being taxed without his con-
sent, was never received, as appears
by the Contests about it in the time
of E. 1. and their Submission after-
wards.

Of the Duties and Rights

The Pope's Canons about Appeals, Provisors, Dispensations, &c. were never received by such a general Consent as to make them Laws; they were sometimes practised by Connivence, and the Kings, when it served their purposes, let them alone; but as often as there was occasion, they were contested and denied, and Statutes made against the Execution of them.

Some Canons I find disputed, whether they were received by the Law of England or not.

*De Filiis
Presbyt. cum
à jure sit in-
hibit. Lyndw.
f. 32.*

As the Canon against Clergy mens Sons succeeding their Fathers in their Benefices immediately, without a Papal Dispensation; is not only a part of the Canon Law, but enter'd in our Provincial Constitutions. But in the Case of Stoke against Sykes, it was held by Dodderidge and Jones, two learned Judges, That this Canon was not received here. And Dodderidge instanced

Latch. 191.

instanced in two other Canons not received; as against a Man's marrying a Woman he had committed Adultery with; and a Lay-man's not revoking his first Presentation. And Sir John Davis mentioned reckoning the Months for Presentation by Weeks, and not by the Calendar. But both these are disputable Points.

Popham, 157.

For some say, as to the former, That none but the King can revoke a Presentation. But the Canonists think a private Patron may vary with the Bishop's Consent.

Leon. I. 156.

Hugh's Parf.

Law, c. 12.

Lyndw. f. 119

Leon. I. 39.

And as to the way of computing the Months, it hath been differently resolved; but in *Catesbie's Case*, it was determined to be Calendar-Months for many Reasons. But in the ancient Resolution in the time of *E. II.* the *Tempus semestre* was reckoned from Notice to the Patron, and not from the Death of the Incumbent. *Rolls* *Rolls A. 2*
saith, By our Law it is from the time *363.*

the Patron might have notice, with regard to the distance of the Place where the Incumbent died: Which leaves the matter uncertain. But the Register reckons from the Vacancy.

Reg. 42. b.

2 Inst. 361.

In many other Cases the foreign Canons were not received, for they allow but *Four Months* to a Lay-Patron, but our Law *Six Months*; they deny any *Sale of a Right of Advowson*, but our Law allows it, and a Separation of it from the Inheritance, which the Canon Law allows not; and so in other particulars, but these are sufficient to my purpose.

Spel. Concil.
II. 329.

Janes, 160.

It is observable, that after the Council of *Lions*, where the Pope was present, *Peckham*, Archbishop of *Canterbury*, called a Provincial Council, wherein he mentions the difference of our Customs from all others, and a Temperament to be made suitable to them. And our Judges in the great Case of *Evans* and

of the Parochial Clergy.

361

and Ayscough, declared, That no Canons bind here, but such as are received by the Realm. And Dodderidge said, *Latch. 234. Plamer, 458.* That our Ecclesiastical Law doth not consist of the Pope's Decretals, but is an Extract out of the Ancient Canons, General and National. But the Judges agreed, That when they are received, they become part of our Law. *469.*

Lord Chief Justice Vaughan saith, *Vaugh. 21.* That if Canon Law be made a part of the Law of the Land, then it is as much the Law of the Land, and as well, and by the same Authority, as any other part of the Law of the Land.

In another place, That the Ancient Canon Law received in this Kingdom, is the Law of the Kingdom in such Cases. *132.*

In a third, That a lawful Canon, is the Law of the Kingdom, as well as an Act of Parliament. *327.*

III. I now

III. I now come to the third thing, viz. The Power of making Canons by Act of Parliament.

This is founded on the Statute 25 H. 8. c. 19. The Words are, That no Canons, Constitutions and Ordinances, Provincial or Synodal, shall be made, promulged and executed without the King's Royal Assent or Licence.

Canons so made, and authorized by the King's Letters Patents, according to the Form of the Statute, are said by Lord Chief Justice Vaughan, to be Canons warranted by Act of Parliament. And such he affirms the Canons of A. D. 1603. to be.

But some have objected,

Bagshaw's
Arg. about
the Canons,
p. 10.

That these are only Negative Words, and are not an Introduction of a new Law, but a Declaration of what the Law was before.

4 Inst. 323.

But my Lord Coke with far greater Judgment, limits that Expression, That what was then passed, was declaratory

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ratory of the Common Law, to that Clause,
That no Canons should be in Force,
which were repugnant to the Laws
of the Realm.

But as to the making of new Canons,
he only saith, That their Jurisdiction
and Power is much limited, because they
must have licence to make them, and
the King's Royal Assent to allow them,
before they be put in Execution. But
he never imagined the Sense of the
Statute to be, That no Canons could
be made but in Parliament, or that
the King had not a Power to con-
firm new Canons made by the Con-
vocation.

As to the Law, as it stood be-
fore, we must distinguish these two
things;

1. Convocations called by the King's
Writ to the Bishops, and the body
of the Clergy, could never assemble
without it. But the Writ for the
Convocation to sit with the Parlia-
ment,

ment, (not together in Place, but at the same time) is contained in the Writ to the Bishop, and begins with the Clause, *Premunientes*. And it is most probable, that it began on the same Ground that the Attendance of Burgeses did, viz. That when they were brought into the Payment of Subsidies, they ought to give their Consent. For I find, that in the time of H. 3. A. R. 39. the Inferiour Clergy complained, That they were taxed without their Consent.

Annal. Burton, 356.

2. Convocations called by the King's Writ to the Archbishops; and in this Province the Archbishop sends his Mandate to the Bishop of London, who is to summon all the Bishops, &c. to appear at a certain Time and Place, and to act as they receive Authority from the King.

The not distinguishing these two Writs, hath caused so much Confusion in some Mens Minds, about the Rights

Rights of the Convocation: For they imagine that the *Convocation*, as it treats of *Ecclesiastical Matters*, sits by Virtue of the first Writ, which is in the Bishops Summons to Parliament; but that related to them as one of the three *Estates* of the Realm, whose Consent was then required to their own Subsidies, which were distinctly granted, but confirmed by the other *Estates*.

But the other Writ was directed to the Archbishop, by which the Bishops and Inferiour Clergy were strictly required to appear, and then to understand the King's further Pleasure, as appears by the most ancient Writs for a Convocation. Which shews, that the Convocation, properly so called, is an Occasional Assembly for such purposes as the King shall direct them when they meet. And this was the true Foundation upon which the Statute, 25 H. 8. was built.

built. For it cannot be denied, that in Fact there had been Convocations for Ecclesiastical Purposes called without the Kings Writ, by Virtue of the Archbishop's Legatine Power, which was permitted to be exercised here, although it were an Usurpation upon the King's Right. So even in the time of *H. 8.* although there were a Convocation summoned by the King's Writ to the Archbishop of *Canterbury*, yet Cardinal *Wolsley*, by Virtue of his Legatine Power, superiour to that of the Archbishop, removed the Convocation to another place, and presided in it: Which was as great an Affront to the King's as well as the Archbishop's Authority, as could well be imagined. But this was then patiently born: Wherefore the Statute is to be understood of Legal, and not of Legatine Convocations.

But when H. 8. was sufficiently provoked by the Court of Rome, he resolved to resume the ancient and legal Rights of the Crown, how soever disused by modern Usurpations. And among these he claimed this of summoning the Convocation, and directing the Proceedings therein.

The Difference of these Writs will best appear by the Instance of the Convocation, A. D. 1640.

In the Year, 1639. about the first of February the Parliament Writ was issued out to the Bishops for calling their Clergy to Parliament; and this is only *ad consentiendum* *is quæ tunc ibidem de communi Concilio Regni nostri contigerint ordinari.*

The other Writ for the Convocation to the Archbishops was issued out the twentieth of February, and had this Clause, *ad tractandum, consentiendum, & concludendum super præmissis*

*missis & aliis quæ sibi clarius exponen-
tur ex parte meâ.*

The Parliament at that time being dissolved, it's certain the *Convocation* sitting by Virtue of the *Writ to the Bishops* must fall with it: But a great Question arose, Whether the *Convocation* sitting by the *Writ to the Archbishops*, was dissolved, or not? And the greatest Judges and Lawyers of that time were of Opinion it was not. But those were not times to venture upon such Points, when people were disposed to find Fault, as they did, to purpose when the next Parliament met; who made use of the Sitting of this *Convocation* and the *Canons* then pass'd, as one of the popular Themes to declaim upon against the Bishops, and to inflame the Nation against the whole Order.

The greatest Objection in Point of Law, was, That the Commission had a Respect to the *Convocation*

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sitting in Parliament-time, which began 13 April 1640. and the Commission bore Date April 15. the Parliament was dissolved May 5. and the 12th of May a new Commission was granted, which made void that of the fifteenth of April; and so what was done by Virtue of that, must be done out of Parliament, and so not in Convocation, according to 25 H. 8. 19. although these Canons were confirmed by the King's Authority the thirtieth of June the same Year.

After the King's Restoration, an Act of Parliament passed for Restoring the Bishops Ordinary Jurisdiction, wherein a Clause is added, *That this Act did not confirm those Canons of 1640. but left the Ecclesiastical Laws as they stood 1639. which Act being passed by the King's Assent, it voids the former Confirmation of them, and so leaves them*

13 Car. 2.
c. 12.

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without Force. But the Alteration of our Law by the Act, 25 H. 8. c. 19. lay not in this, that the Convocation by the King's Writ to the Archbishop, could not sit but in Parliament-time (although that in all respects be the most proper time) for there is not a Word tending that way in the Statute; but *Provincial Councils* having been frequently held here, without any Writ from the King, and therein treating of Matters prejudicial to the Crown, by Virtue of a Legatine Power, there was great Reason for the King to resume the ancient Right of the Crown. For so William I. declared it in *Eadmerus*, That nothing should be done in *Provincial Councils* without his Authority. But afterwards we find *Hubert*, Archbishop of Canterbury, holding a *Provincial Council* against the King's *Prohibition*; and several Writs were sent to them to prohibit their meddling

Eadmer. Hist.
p. 6.

Hoveden,
p. 806.

Spel. II. 123.

ding in Matters of State in Prejudice to the Crown, 18 H. 3. under Penalty of the Bishops forfeiting their Baronies; and to the like purpose, 35 E. 1. 15 E. 2. 6 E. 3. which seems to be a tacit Permission of these *Provincial Councils*, provided they did nothing prejudicial to the Crown. And from such Councils came our *Provincial Constitutions*, which *Lyndwood* hath digested according to the Method of the Canon-Law; and hath therein shewed what part of the Canon-Law hath any Force here; not by Virtue of any Papal or Legatine Power, but by the *General Consent of the Nation*, by which they have been received among us.

But my business is not now with *Canons* so received, but with *Canons made according to the Statute*, 25 H. 8. 19. for it is ridiculous to imagine those are only negative Words, for then they exclude the King's Power

of calling a Convocation, as well as confirming the Acts of it. For to what purpose is the King's Writ to call them together, if being assembled they can do nothing?

But I have already mentioned my Lord Chief Justice *Vaughan's* Opinion, That the Canons made A. D. 1603. are warranted by 25 H. 8. c. 19. It was urged by the Council in the Case of *Grove and Eliot*, 22 Carol. 2. That no Canons can alter the Laws which are not confirmed by Act of Parliament. But it was said on the other side, That these Canons had been always allowed, having been confirmed by the King. One of the Judges said, That the King and Convocation cannot make Canons to bind the Laity, but only the Clergy. But *Vaughan* said, That those Canons are of Force, although never confirmed by Act of Parliament, as no Canons are; and yet, saith he, they are the Laws which bind and govern

Ventr's Rep.
II. 42.

govern in Ecclesiastick Affairs. The Convocation, with the Licence and Assent of the King, under the Great Seal, may make Canons for Regulation of the Church, and that as well concerning Laicks as Ecclesiasticks; and so is Lyndwood. There can be no question in Lyndwood's time, but Ecclesiastical Constitutions were thought to bind all that were concerned in them; and the Ecclesiastical Laws which continue in Force by Custom and Consent, bind all; the only Question then is about making new Canons, and the Power to make them, is by Virtue of an Act of Parliament, to which the Nation consented; and so there need no Representatives of the people in Convocation. And no such thing can be inferred from Moor, 755. for the Judges declared the Deprivation of the Clergy for not conforming to the Canons, to be legal; but they say nothing

of others. But in the Case of *Bird and Smith, f. 783.* the Chancellor and three Chief Judges declared, That the Canons made in Convocation by the King's Authority, without Parliament, do bind in Ecclesiastical Matters, as an Act of Parliament. And therefore I proceed to shew,

II. In what manner we are obliged to the Observation of these *Canons*; concerning which I shall premise two Things;

1. That I meddle not with such *Canons* as are altered by Laws; for all grant, that unless it be in Moral Duties, their Force may be taken away by the Laws of the Land.

2. There are some Canons, where the general Disuse in Matters of no great Consequence to the Good of the Church, or the Rights of other Persons, may abate the Force of the Obligation; especially when the

Disuse

Disuse hath been connived at, and not brought into Articles of Visitation, as *Can. 74.* about *Gowns with standing Collars, and Cloaks with Sleeves.* But the general Reason continues in Force, *viz.* That there should be a decent and comely Habit for the Clergy, whereby they should be known and distinguished by the People; and for this, the ancient Custom of the Church is alledged.

But here a very material Question arises, How far Custom is allowed to interpret and alter the Force of Canons made by a lawful Authority: For where a Custom prevails against a standing Rule, it amounts to this, Whether Practice against Law, is to have more Force than the Law. And how can there be a reasonable Custom against a Law built upon reasonable Grounds? But on the other side, if Custom hath no power in this case, then all

the ancient Canons of the Church do still bind in Conscience, and so we must not kneel at our Prayers on Sundays, nor between *Easter* and *Whitsontide*, which were thought to be made upon good Reason at first; and so many other Canons which have long grown into a Disuse. So that if we do strictly oblige persons to observe all Ecclesiastical Canons made by lawful Authority, we run Men into endless Scruples and Perplexities; and *Gerson* himself grants, *That many Canons of General Councils have lost their Force by Disuse, and that the Observation of them now would be useless and impossible.* But on the other side, if meer Disuse were sufficient, what would become of any Canons and Constitutions, where Persons are refractory and Disobedient?

This is a Case which deserves to be stated and cleared. And we are

Gerson de
Vit. Spirit.
Lect. 4. Cor.
13.

to distinguish three sorts of Customs.

1. Customs generally obtaining upon altering the Reason of ancient Canons.

2. Customs allowed upon the general Inconveniency of modern Canons.

3. Customs taken up without any Rules or Canons for them.

1. As to general Customs against ancient Canons where the Reason is altered; I see no Ground for any to set up those Canons, as still in Force, among us: For this must create Confusion and Disorder, which those Canons were designed to prevent; and the Laws of the Land do certainly supersede ancient Canons, wherein the necessary Duties of Religion are not immediately concerned. For we must have a care of setting up ancient Canons

Canons against the Authority of our Laws, which cannot be consistent with our National Obligation, nor with the Oath of Supremacy.

2. As to Customs relating to Modern Canons, if it hath any Force, as to altering the Obligation.

1. It must be general; not taken up by particular dissaffected Persons to our Constitution; for the Custom of such Men only shews their wilful Disobedience and Contempt of Authority; and all Casuists are agreed, That Contempt of lawful Authority, is a wilful Sin; Which supposes a wilful Neglect upon Knowledge and Admonition of their Duty. For Contempt is, *Nolle subjici cui oportet subjici*; and a lesser Fault committed with it, is a greater Sin than a greater Fault in it self committed without it, *i. e.* by meer carelesness and inadvertency. But where there is an open and customary Neglect, there is a

*Cajet. Sum.
in Verb.*

Pre-

Presumption of Contempt, unless some great and evident Reason be produced for it. I do not say the bare Neglect doth imply Contempt in it self, but where there is admonition and a continuance after it, there is a down-right and positive Contempt. But where the Disuse is general, not out of Contempt, but upon other Reasons; and there is no Admonition by Superiours, but a tacit Connivence; there is a Presumption of a Consent towards the laying aside the strict Obligation of the Canons relating to it.

2. It must be reasonable; *i. e.* on such Grounds as may abate the Force of the Obligation. For there is a Difference between a Custom obtaining the Force of a Law, and a Custom abating the Force of a Canon: In the former case the Custom must be grounded on more evident Reason than is necessary for the latter.

Soto de Just.
l. 1. Q. 7.
Art. 2. ad 2.
Sayr. Clavis
Reg. l. 3. c.
11. n. 12.

ter. Wherein the Casuists allow a Permission of Superiours joyned with reasonable Circumstances, to be sufficient.

But how can acts of Disobedience make a reasonable Custom?

Caj. ad 1. 2.
Q. 97. Art. 3.

Cajetan saith, They are to blame who began it, but not those who follow it, when the Custom is general.

Suar. de Leg.
l. 4. c. 16. n. 9.

And *Suarez* saith, It is the common Opinion.

The Canonists say, If a Custom be against a Rule, the Reason must be plain; if only besides the Rule, and be not repugnant to the End and Design, the Reasonableness when it becomes general, is presumed. But if the Superiours take notice of it, and condemn it, it loses the Force of Custom, unless a new Reason or higher authority appear for it.

Roch. Curt.
de Statut.
Sect. 2. n. 20,
34.
Sect. 7. n. 5,
11, 12, 13.

3. But what is to be said for Customs taken up without Rules or Canons; of what Force are they in Point of Conscience?

1. It

1. It is certain, that no late Customs brought in by such as have no Authority to oblige, can bind others to follow them. For this were to lay open a Gap to the introducing foolish and superstitious Customs into the Church, which would make Distinctions without cause, and make way for Differences and Animosities, which all wise and good Men will avoid as much as may be.

It is a Rule among the Casuists, Soto, l. 1. c. 72
Art. 2. That voluntary Customs, although introduced with a good Mind, can never oblige others to observe them. And *Suarez* yields, that a bare frequent Repetition of Acts cannot bind others, although it hath been of long continuance. Suarez, de LL,
l. 7. c. 15.
10, 11.

2. If the Customs be such as are derived from the primitive times, and continue in practice, there is no Reason to oppose, but rather to comply

ply with them; or if they tend to promote a Delight in God's Service. As for instance:

1. *Worshipping towards the East*, was a very ancient Custom in the Christian Church. I grant that very insufficient Reasons are given for it, which *Origen* would not have Men to be too busie in inquiring into, but to be content that it was a generally received Practice, even in his time; and so doth *Clemens Alexandrinus* before him, who thinks it relates to Christ, as the Sun of Righteousness. *Tertullian* and *S. Basil* own the Custom, and give no Reason.

But of all Customs that of Contention and Singularity, where there is no plain Reason against them, doth the least become the Church of God.

2. *The Use of Organical Musick in the Publick Service*. If it tends to compose, and settle, and raise the Spirits

*Origen. in
Numer. Hom.
5.*

*Clem. Alex.
Str. L. 7.*

*Tertul. Apol.
c. 16.
Basil. de Sp.
Sancto c. 27.*

of Men in the Acts of Worship, I see no Reason can be brought against it. If it be said to be only a natural Delight, that Reason will hold against David, who appointed it by God's own Commandment. They who call it *Levitical Service*, can never prove it to be any of the Typical Ceremonies, unless they can shew what was represented by it.

2 Chron. 29.
25.

I come now to the Measure of the Obligation of the Canons in Force.

And therein a great Regard is to be had to the *Intention* of that Authority which enjoyns them; and that is to be gathered from three Things;

1. The Matter. 2. The Words and Sense of the Church. 3. The Penalty.

1. As to the Matter. If it be in it self weighty, and tends to promote that which is good and pious, and for the Honour of God, and Service of

of Religion, it cannot be denied but these Canons do oblige in Conscience.

Bell. de R. D.
L. 14. c. 18.

Bellarmin distinguishes between Laws of the Church, which, he saith, are very few, and pious Admonitions and good Orders, which are not intended to oblige Men to sin, but only in case of Contempt and Scandal. And as to the Feasts and Fasts of the Church, which belong to the Laws, he saith, They have *mutissimam Obligationem*; so any one would think, who considers how many are exempted, and for what Reasons.

De Vir. Spir.
Lect. 4. Cor. 1.

Gerson saith, That no human Constitutions bind as to moral Sin, unless it be founded on the Law of God; as he confesses the Church's Authority is, as to circumstances; and then he thinks it obliges in Conscience. The Substance of his Opinion, which hath been much disputed and controverted by Modern Casuists, lies in these things :

Coroll. 6.

1. That

mi. That where Ecclesiastical Con-
stitutions do enforce any part of the
Law of God, although it be not ex-
pressly contained therein, they do im-
mediately bind the Consciences of
Men.

mi. 2. That where they tend to the
good of the Church, and the Preser-
vation of Decency and Order, they
do so far oblige, that the contempt
of Authority therein, is a Sin against
the Law of God.

mi. 3. That where the Injunctions of
Authority are for no other End, but
to be obeyed, he doth not think that
there is any strict Obligation in point
of Conscience.

And so far Cajetan agrees with
him.

*Cajet. Sum.
6. Contempt.
Ec. Clericor-
um.*

And although the other Casuists
seem to be very angry with him, yet
when they require a publick Good,
and the Order of the Church to be
the Reason of Ecclesiastical Laws,

So

they

they do, in effect, agree with him.

Now as to the Matter of our Canons which respect the Clergy, there are two especially which bind them strictly,

1. The Canon about Sobriety of Conversation, *Can. 79*. Yes, some may say, as far as the Law of God obliges, i. e. to Temperance and Sobriety; but the Canon forbids resorting to Taverns, or Alehouses, or playing at Dice, Cards, or Tables; doth this Canon oblige in Conscience in this manner? If it were a new thing that were forbidden, there were some Plea against the Severity of it; but frequenting Publick Houses is forbidden by the Apostolical Canons, which are of great Antiquity, by the Council of *Laodicea*, and in *Trullo*, and many others since.

And by the Apostolical Canons any Presbyter playing at Dice, and

Can. Apost.
54.

Laodicea, 24.

In Trullo, 9.

Cartbag. 43.

Dist. 44. 2, 3, 4.

Aquisgr. c. 14.

Francf. c. 19.

Aquisgr. 2. c. 69. *Extr. de Vit. & Honest. Cleric.* c. 15. *Cont. Wic.* mon. c. 2. *Spelm.* II. 192. *Lynd.* 1. 3. c. 1.

con-

continuing so to do after Admonition, is to be deprived. The *Illiberitan Council* makes it Excommunication to play at Dice. Not meerly for the Images of the Gentile Gods upon them, as *Albaspinaeus* thinks, but because the thing it self was not of good Report, even among the *Gentiles* themselves; as appears by *Cicero*, *Ovid*, *Suetonius*, &c. as giving too great Occasion for indecent Passions, and of the loss of time. *Hosiensis* reckons up Sixteen Vices that accompany it, which a Clergyman especially ought to avoid. And playing at Dice was infamous by the Civil Law.

Concil. Illiber. Can. 79.

Cicero Phil. 3.

Ovid de A. A.

l. 3.

Suet. in Aug.

c. 71.

Hosiens. Sum.

D. 3. de Ex-

cess. Pralat.

D. de Aleat.

l. 2.

Justinian forbids Clergymen not only playing, but being present at it. It was forbidden in the old Articles of Visitation here, and in several Diocesan Synods, *Spelm. II. 192, 232, 298, 367, 450.* So that there can be no Reason to complain of the

Cujac. Observ.

l. 9. c. 28.

C. de Episcop.

Audient.

Severity of this Canon, which so generally obtained in the Christian Church.

II. The Canons which relate to Ministers discharging the several Duties of their Function, in Preaching, Praying, Administring Sacraments, Catechizing, Visiting the Sick, &c. which are intended to inforce an Antecedent Duty ; which we can never press you too much or too earnestly to ; considering that the Honour of Religion, and the Salvation of your own and the Peoples Souls depend upon it.

(2.) The next way of judging the Church's Intention, is by the Words and Sense of the Church. *Cajetan* thinks the general Sense is the best Rule. *Navarr* saith to the same purpose, although some Words are stricter than others. *Suarez*, That the main Obligation depends on the matter,

*Caj. 83 Prae-
sept.
Navar. Man.
c. 23. n. 30,
&c.*

*Suarez de
L.L. l. 4. c. 18.*

matter, but the Church's Intention may be more expressed by special Words of Command. *Tolet* relies *Tolet. Summ.*
l. 8. c. 19.
n. 3. most upon the Sense of the Church: But the Sense of the Church must be understood, whether it be Approving, or Recommending, or strictly Commanding, according to the Obligation of Affirmative Precepts, which makes a reasonable Allowance for Circumstances. And so our Church in some cases expressly allows reasonable Impediments. And in Precepts of Abstinence, we must distinguish the Sense of the Church, as to Moral Abstinence, i. e. subduing the Flesh to the Spirit; and a Ritual Abstinence in a meer Difference of Meats, which our Church lays no Weight upon; and a Religious Abstinence for a greater Exercise of Prayer and Devotion, which our Church doth particularly recommend at particular Seasons, which I need not mention.

Of the Duties and Rights

(3.) By the Penalties annexed; which you may find by reading over the Canons, which you ought to do frequently and seriously, in order to your own Satisfaction about your Duties, and the Obligation to perform them.

But some may think, that such Penal Canons oblige only to undergo the Punishment.

To which I answer, That the case is very different in an *Hypothetical Law*, as *Suarez* calls it; when Laws are only conditional and disjunctive, either you must do so, or you must undergo such Penalty, which is then looked on as a legal Recompence; and Ecclesiastical Constitutions, where Obedience is chiefly intended, and the Penalty is annexed only to enforce it, and to deter others from Disobedience. For no Man can imagine that the Church aims at any Man's Suspension or Deprivation

vation for it self, or by way of compensation for the Breach of its Constitutions.

And now give me leave not only to put you in mind, but to press earnestly upon you the diligent Performance of those Duties, which by the Laws of God and Man, and by your own voluntary Promises when you undertook the Cure of Souls, are incumbent upon you. It is too easie to observe, That those who have the Law on their side, and the Advantage of a National Settlement, are more apt to be remiss and careless when they have the Stream with them, than those who row against it, and therefore must take more pains to carry on their Designs. As those who force a Trade must use much more Diligence, than those who go on in the common Road of Businels. But what Diligence others use in gaining Parties,

do you imploy in the saving their Souls : Which the People will never believe you are in earnest in, unless they observe you are very careful in saving your own by a conscientious Discharge of your Duties. They do not pretend to Fineness of Thoughts, and Subtily of Reasoning, but they are shrewd Judges whether Men mean what they say, or not; and they do not love to be imposed upon by such a sort of Sophistry, as if they could think that they can have such a Regard to their Souls, who shew so little to their own. Therefore let your unblameable and holy Conversations, your Charity and good Works, your Diligence and Constancy in your Duties, convince them that you are in earnest; and they will hearken more to you, than if you used the finest Speeches, and the most eloquent Harangues in the Pulpit to them. These, the People under-

understand little, and value less; but a serious, convincing, and affectionate way of Preaching, is the most likely way to work upon them. If there be such a thing as another World, as no doubt there is, what can you employ your Time, and Thoughts, and Pains better about, than preparing the Souls of your People for a happy Eternity? How mean are all other laborious Trifles, and learned Impertinencies, and busie Inquiries, and restless Thoughts, in comparison with this most valuable and happy Employment, if we discharge it well? And happy is that Man, who enjoys the Satisfaction of doing his Duty now, and much more happy will he be whom our Lord, when he cometh, shall find so doing.